S5222-1-U

THE TWENTY FIRST BIENNIAL REPORT *of the* JUDICIAL COUNCIL *of* THE STATE OF NEW HAMPSHIRE

Established by RSA 494

December 31, 1986

Gregory H. Smith
Chairman

Norman H. Stahl
Vice Chairman

THE
TWENTY FIRST
BIENNIAL REPORT
of the
JUDICIAL COUNCIL
of
THE STATE OF NEW HAMPSHIRE

Established by RSA 494

December 31, 1986

THE NEW HAMPSHIRE JUDICIAL COUNCIL
January 1985 - December 1986

Chairman
GREGORY H. SMITH

Vice Chairman
NORMAN H. STAHL

Chief Justice, Supreme Court
DAVID A. BROCK

Chief Justice, Superior Court
RICHARD P. DUNFEY

Judge, Probate Court
DONALD W. CUSHING

Judges, District Court
ROBERT L. CULLINANE [1]
URVILLE J. BEAUMONT [2]
FRANCIS J. FRASIER [3]

Attorney General
STEPHEN E. MERRILL

Clerk, Superior Court
STILLMAN D. ROGERS

President, Bar Association
WALTER L. MITCHELL [4]
L. JONATHAN ROSS [5]
FRED L. POTTER [6]
PHILIP R. WAYSTACK, JR. [7]

Appointed Members
GEORGE W. WALKER
H. ALFRED CASASSA
RICHARD A. HAMPE
FRANK E. KENISON [8]
SANDRA F. SMITH [9]
RICHARD C. GAGLIUSO [10]
PHILIP S. DUNLAP [11]

---

[1] Through June 1985
[2] June 1985 - June 1986
[3] June 1986 -
[4] Through June 1985
[5] Through June 1986
[6] June 1985 -
[7] June 1986 -
[8] Through March 1986
[9] Through July 1986
[10] March 1986 -
[11] July 1986 -

TABLE OF CONTENTS

Introduction, Gregory H. Smith, Chairman 1

Report of the Executive Director 3

Standing Committees 5
Special Committees 6

Legislative Reports

1985

Report on Senate Bill 2 Relative to Child Victims and Child Abuse 9

Report on Senate Bill 38 Relative to De-unification of the New Hampshire Bar Association 15

Report on RSA 561:3 Relative to Intestate Descent and Distribution Among Collateral Heirs 17

1986

Testimony on Senate Bills 96 and 91 relative to the insanity defense and a guilty-but-mentally-ill defense 21

Amendments to House Bill 91 providing for service of process by certified mail. 27

Report on House Bill 36 Relative to Settlements on Behalf of Minors and Legacies to Minors Not Under Guardianship 29

Testimony on House Bill 58 Relative to Strict Liability for Hazardous Waste Cleanup and Priority of State Liens on Certain Property 31

Judicial Council support of HB 47 relative to comparative fault, apportionment of damages, and contribution among joint tortfeasors 33

Tort Reform, 1986 Session, Introduction 35

Report on Senate Bill 78 relative to Comprehensive Tort Reform 37

Report on House Bills 283, 338, 329, 168, 7, and Senate Bill 78, as amended, relative to Tort Reform. 41

Report on House Bill 156 Concerning the Statute of Uses 51

Legislation Recommended by Judicial Council and Adopted Into Law 53

Judicial Statistics 56

Supreme Court
Calendar Year 1985 and 1986 57

Superior Court
Calendar Year 1985 59
January 1, 1985 - June 30, 1985 60
July 1, 1985 - December 31, 1985 61

Superior Court
Calendar Year 1986 63
January 1, 1986 - June 30, 1986 64
July 1, 1986 - December 31, 1986 65

Probate Court
July 1, 1984 - June 30, 1985 66
July 1, 1985 - June 30, 1986 67

District and Municipal Courts:
Criminal Case Entries
January 1 - June 30, 1985 68
July 1 - December 31, 1985 69

Civil Case Entries
January 1 - June 30, 1985 72
July 1 - December 31, 1985 74

Juvenile Case Entries
January 1 - June 30, 1985 76
July 1 - December 31, 1985 77

Criminal Case Entries
January 1 - June 30, 1986 78
July 1 - December 31, 1986 80

Civil Case Entries
January 1 - June 30, 1986 82
July 1 - December 31, 1986 84

Juvenile Case Entries
January 1 - June 30, 1986 86
July 1 - December 31, 1986 87

INTRODUCTION

by

Gregory H. Smith

Chairman, Judicial Council

During the biennium the Judicial Council participated extensively in the public policy debate in the Legislature on a number of significant issues directly affecting the administration of justice in the State courts. In each case, the Council carefully considered the issues, formulated a position and presented its written legal analysis of the issues and recommendations as testimony to the committees of the Legislature. The Council consistently avoided partisan positions as its members searched for sound recommendations to the Legislature on the issues at hand. The positions taken by the Council resulted from the consensus forged from the distinctly different views of the individual members of the Council.

This Report reflects the wide ranging nature of the Council's work over the biennium. The Council was involved in matters as varied as proposals for tort reform, protection of minor victims of sexual abuse, and reorganization of the judicial system and its procedures.

The tort reform debate was joined by participants with sharply differing views as to the need to make changes in procedural and substantive law to alter the balance of the present system between plaintiff-victims and the defendants against whom they file suit to recover for their damages. The Council followed a moderate path providing technical legal analysis to legislative committees on a variety of issues raised by proposals for statutory change, avoiding any of the more entrenched views of other participants in the debate.

As part of its work on tort reform, in extensive work sessions with the subcommittee of the House Judiciary Committee, the Council took the lead in writing contribution legislation modelled on the Uniform Comparative Fault Act to provide a mechanism for joint tortfeasors who have settled with an injured victim, to pursue other wrongdoers for contribution of their fair share of the damages.

The Council also took the lead in preparing and developing new methods to protect the rights of victims in criminal proceedings. Following the Citizens Conference debate on this issue, sponsored by the Council in the spring of 1985, the Council proposed innovative legislation and changes to court rules to lessen the burden of the judicial process on young victims of sexual abuse.

Several legislative proposals were considered and rejected by the Legislature on recommendation of the Council, any one of which could have altered long standing, well established attributes of our State judicial system. These proposals, which were offered for the purpose of opening the judicial process to greater public access, were rejected because they would not have served the purpose of improving the administration of justice. With this purpose in mind, however, the Council proposed new procedures for the adoption of all court rules to provide improved access by the public to court procedures. The Supreme Court accepted the Council's recommendation and

adopted the new rules assuring all citizens the opportunity to participate in the formulation of judicial procedures employed by the courts in every legal case.

Our efforts in each of these broad areas, tort reform, victims rights and public access to the judicial process, served the common purpose of enhancing the administration of justice for the benefit of our citizens who must rely on the judicial system for protection of their legal rights.

REPORT OF THE EXECUTIVE DIRECTOR

During the years 1985 and 1986, the Judicial Council held its third Citizens' Conference, assumed administrative responsibility for a new Contract Attorney program, and fulfilled its continuing duty to recommend improvements in the administration of justice, to publish statistics on the judicial system, and to supervise and contract with a public defender. The full Council met in formal session 16 times during the two years in addition to subcommittee meetings and appearances before Legislative Sessions. This being the first biennium since the Constitution was amended to provide for annual sessions of the General Court, the Council's legislative activities were extensive and are reflected in the reports included in this volume as well as the list on page 55 of legislation recommended by the Council and enacted into law.

The Citizens' Conference on the Administration of Justice

The third Citizens' Conference, held March 4, 1985, in Manchester, explored two topics: procedures for reviewing complaints of judicial misconduct and the role of victims in our criminal justice system. Both discussions were helpful in producing changes in New Hampshire procedures. Supreme Court Rules were amended in January of 1986 to broaden the investigative powers of the Committee on Judicial Conduct, and in February of 1986 Superior Court Rules were amended to provide for videotaped depositions of minor victims and witnesses in sex-related cases. This was consistent with legislation supported by the Council to assist victims, which was adopted during the 1985 Session and which included special procedures for child victims. A full report and record of the Conference is available at the Council's office.

The Contract Attorney Program, RSA 604-A:2-b

Effective July 1, 1985, the Judicial Council was authorized to contract for a flat fee with private attorneys to represent indigent defendants when the Public Defender is unavailable because of caseload overflow or conflicts of interest. The program was in operation by August 1, 1985. During 1985 and 1986 the members of the Council interviewed approximately 85 applicants and selected 43 for contracts. The Contract Attorneys were assigned to 2,300 cases in fiscal year 1986 and will have been assigned to approximately 3,000 by the end of fiscal year 1987. As a result, the number of cases assigned to the more expensive Assigned Counsel program, where court appointed attorneys bill by the hour, has been reduced from 40% of the indigent criminal caseload to less than 10%. For the first time, during the current biennium there has been no funding crisis in indigent defense as a result of the foresight of the Governor and the Legislature and to the development of reasonably reliable caseload statistics by the Department of Administrative Services.

The 1985 and 1986 Legislative Sessions

Four of the positions of the Council published in the 1984 Biennial Report have been effective during this biennium. The report on judicial rulemaking and the report on judicial selection, retention and tenure assisted lawmakers in their deliberations on bills that would have fundamentally altered the delicate constitutional balance between the legislative and

judicial branches of government as well as New Hampshire's time-proven methods of selecting and retaining judges. It is also noteworthy that in January of 1985 the Supreme Court adopted Rule 51 establishing judicial rulemaking procedures that incorporate public process, consistent with the recommendation of the Council in its report on judicial rulemaking. The Council's recommendation regarding durable powers of attorney, House Bill 276, was enacted in 1985. In October of 1986, in In Re Estate of Henry Dionne, the Supreme Court held, consistent with the Judicial Council's 1984 report, that RSA 547:23, pertaining to compensation of Probate Judges in contested hearings is unconstitutional.

The Council considered proposals to change the Constitutional provision regarding the right to trial by jury in civil matters. Against the Council's recommendation, an amendment was offered to the voters in November of 1986 that would have removed from the Constitution the dollar amount above which the right to a civil jury trial is guaranteed and would have given the Legislature the authority to set the amount by statute. The Council released press statements encouraging the public to vote against this proposal, and several newspapers editorialized against the amendments. The proposal was defeated at the polls.

The Council also urged disapproval of reducing criminal juries to six persons and enactment of an unsatisfactorily drafted shield law for reporters. In recommending interim study for the shield law bill, House Bill 49 (1986), the Council provided advice to legislators concerning New Hampshire case law that addressed many of the concerns of proponents of the legislation.

Public Defender

Pursuant to the Council's statutory duty to contract on behalf of the State for public defender services (RSA 604-B:4), in the spring of 1985 the Council reviewed a proposal from the New Hampshire Public Defender and recommended a contract for the 1986-1987 biennium subject to the appropriation approved by the General Court. On June 26, 1985, Governor and Council approved the contract, which provided for maximum payments of $2,500,000 in fiscal year 1986 and $2,800,000 in fiscal year 1987, an increase of $1,600,000 over the previous biennium's appropriation. The contract calls for an increase in attorney staff during the biennium from the 1985 minimum of 33.75 attorneys to a minimum of 41.35 attorneys to provide defender services in all ten counties.

Statistics

The statistics in this report were provided by the Administrative Office of the Courts. The Council appreciates the assistance of Bonnie Mischke in compiling the many reports submitted by the courts.

The Superior Court statistics include a section labeled "Other Information" which provides an estimated breakdown of the criminal caseload. Whereas the statistics listed above this section are counted by docket number, the "Other Information" may include multiple charges in a single docket entry, and the totals will not necessarily match the total docket numbers.

Jo Ellen Orcutt
Executive Director

NEW HAMPSHIRE JUDICIAL COUNCIL
STANDING COMMITTEES
1985 - 1986

COMMITTEE ON COURT RULES

L. Jonathan Ross, Chairman
Stillman D. Rogers

COMMITTEE ON INNOVATIONS

David A. Brock, Chairman
L. Jonathan Ross
Norman H. Stahl
George W. Walker

COMMITTEE ON FORM AND STYLE

Frank E. Kenison
Norman H. Stahl

PUBLIC DEFENDER COMMITTEE

H. Alfred Casassa, Chairman
Stillman D. Rogers
L. Jonathan Ross
George W. Walker
Fred L. Potter

SPECIAL COMMITTEES
1985 - 1986

CHILD VICTIMS OF SEXUAL ABUSE

Stephen E. Merrill, Chairman
Frank E. Kenison
Marilyn Billings McNamara
Gregory H. Smith
Norman H. Stahl

LEGISLATION PROPOSING DE-UNIFICATION OF N. H. BAR

Gregory H. Smith

INTESTATE DESCENT AND DISTRIBUTION AMONG COLLATERAL HEIRS

Stillman D. Rogers

SERVICE OF CIVIL PROCESS

Norman H. Stahl, Chairman
George W. Walker
Richard C. Gagliuso
Stillman D. Rogers

SETTLEMENTS ON BEHALF OF MINORS & LEGACIES TO MINORS NOT IN GUARDIANSHIP

Fred L. Potter, Chairman
Hon. Donald W. Cushing

STRICT LIABILITY FOR HAZARDOUS WASTE CLEANUP AND PRIORITY OF STATE LIENS ON CERTAIN PROPERTY

Gregory H. Smith

CONTRIBUTION AMONG JOINT TORTFEASORS

Gregory H. Smith, Chairman
Frank E. Kenison
Stephen E. Merrill
George W. Walker

TORT REFORM

Norman H. Stahl, Chairman
Frank E. Kenison
George W. Walker
L. Jonathan Ross
Ronald F. Rodgers

ABOLISHING THE STATUTE OF USES

Norman H. Stahl

APPEAL BY THE STATE IN CRIMINAL CASES

George W. Walker, Chairman
Stephen E. Merrill

DURABLE POWERS OF ATTORNEY

Norman H. Stahl

INSANITY DEFENSE

Gregory H. Smith

SHIELD LAW FOR REPORTERS

Stillman D. Rogers
Frank E. Kenison

MARITAL MASTERS

Richard A. Hampe

ALTERNATIVE RESOLUTIONS IN MARITAL DISPUTES

L. Jonathan Ross, Chairman
Richard A. Hampe
Marilyn Billings McNamara

SOVEREIGN IMMUNITY

Walter Mitchell, Chairman
Frank E. Kenison
Stephen E. Merrill
George W. Walker

PROPOSED DEPARTMENT OF JUSTICE

Gregory H. Smith, Chairman
Hon. Richard P. Dunfey
Stephen E. Merrill
L. Jonathan Ross

MILEAGE RATE FOR OUT-OF-STATE WITNESSES

Stillman D. Rogers

JURY SIZE

Hon. David A. Brock
Richard C. Gagliuso
Norman H. Stahl

NOMINATING COMMITTEE

Hon. David A. Brock
H. Alfred Casassa
Fred L. Potter

CITIZENS' CONFERENCE, 1985

Hon. David A. Brock, Chairman

REPORT OF THE JUDICIAL COUNCIL ON SENATE BILL 2 RELATIVE TO
CHILD VICTIMS AND CHILD ABUSE
February 5, 1985

Child sexual abuse has received national attention for the past several years. As publicity concerning this crime has increased, so have the number of reports, investigations, arrests and prosecutions in New Hampshire and elsewhere. As child sexual abuse becomes a more public topic, we find it increasingly important to address not only the rights of those accused of the crime, but the interests of the victims as well. This report focuses on the administration of justice and its effectiveness with regard to child victims, as well as to children who may become victims if perpetrators are not identified, prosecuted, punished or treated. This report is limited to problems identified in the criminal justice system.

New Hampshire has a mandatory reporting law which requires anyone who suspects child abuse to report the suspicion to the Division of Welfare. (Only attorneys are exempt, to protect the attorney-client privilege.) The report, if substantiated, usually brings the alleged perpetrator into the criminal justice system. The accused is protected by the Constitutional rights to confrontation, speedy trial, counsel and the presumption of innocence.

In April, 1984, the Council was asked by the State Senate Select Committee on Child Abuse to participate in its review of statutes, court rules and legal procedures which have a direct impact on child witnesses in abuse cases. The Senate Select Committee has heard testimony from parents, child advocates and others describing the significant adverse effects of the judicial process on child abuse victims.

The Judicial Council has reviewed the present method of handling these cases and concluded that improvement can and should be made in the legal procedure for child abuse cases. With the understanding that new proposals pertaining to child sexual abuse may arise during the current Legislative Session on which the Council may wish to comment, we hereby make the following recommendations:

A. Victim/Witness Assistance Program

Throughout the course of this study, no one has suggested that prosecutors in New Hampshire lack concern for victims. However, cases of child sexual abuse would, in our view, benefit from the availability of specialized skills and greater resources than local prosecutors and county attorneys can call upon at the present time. Since an understanding of the special problems of children is a prerequisite to effective advocacy in these cases, we recommend that the Attorney General be authorized to establish a victim/witness assistance program. Such a program would benefit victims and witnesses in any case involving violence, including child sexual assault cases. The Attorney General could retain and assign trained non-lawyer assistants who would make the system more responsive and helpful to victims of crime and assist prosecutors and investigators throughout the course of these cases. These assistants should be assigned by the Attorney General to each county, to

work with prosecutors, police and victims. They could assist victims and their families by providing information about available community resources such as counseling, by educating the victims and their families as to what to expect as the case progresses, and by notifying them promptly of trial schedules and changes. They would assist in the interviews by investigators where it would be helpful to police or the victim, and they would help explain to the victim the labyrinth of civil and criminal legal procedures applicable to the case.

B. Depositions

1. Elimination of Discovery Depositions

The Senate Select Committee proposes legislation permitting videotaped depositions of child victims and witnesses to be used in lieu of live testimony at trial in those cases where the victim, at the time of the alleged offense, was a minor. Such legislation would serve three purposes:

(1) Protect the child from unnecessary psychological harm that may result from the experience of testifying in open court;

(2) Allow the child's testimony to be taken at an earlier stage in the criminal proceedings, while the child's memory is fresh; and

(3) Minimize the length of time the child must endure the stress of his or her involvement in the criminal proceedings.

However, to effectively accomplish these goals, any proposed legislation must also eliminate in cases which the victim was a minor the defendant's right to take a discovery deposition of the child. Under current law (RSA 517:13), a criminal defendant is entitled to take the deposition of any person in his defense. These types of depositions are unnecessary because through normal discovery the victim's statement is readily available to the defendant. Moreover, the elimination of discovery depositions would reduce the number of times the child had to recall and relate the facts surrounding the crime. Discovery depositions in criminal cases are not allowed in other jurisdictions. For instance, in the federal system, a defendant is entitled only to Brady material -- Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed. 2d 215 (1963); U.S. v. Augers, 427 U.S. 97, 96 S.Ct. 2392, 49 L. Ed. 2d 342 (1976) - that is, exculpatory evidence or evidence favorable to the defendant.

The amended RSA 517:13 (added provisions underlined) is as follows:

> The respondent in a criminal case may take the discovery deposition of any person in his defense, upon giving the same notice of the caption thereof to the prosecutor that is required to be given to the adverse party in a civil case. Any discovery deposition so taken may be used on the trial of the case whenever, in the discretion of the court, the use thereof shall be deemed necessary for the promotion of justice. Notwithstanding this section, no party in a criminal case in which the victim, at the time of the alleged offense, was under the age of majority may take the discovery deposition of the victim or any witness under the age of majority.

2. Videotaped Depositions

There may be some cases where a minor victim or witness will suffer emotional or mental strain if required to testify in open court. Similarly, the child's memory could be compromised if there is delay before trial. In order to overcome these difficulties and address the concerns mentioned by the Senate Select Committee, any party should be allowed to petition the court to use a videotaped deposition of the child victim or witness in lieu of live testimony at trial. The following proposal would enable the State to prosecute cases it might otherwise decline because of the witness' inability to endure the process:

New RSA 517:13-a Videotaped Deposition Authorized

I. In any criminal case, any party may move to take a videotaped deposition of any witness, including the victim, who is under the age of majority at the time of said motion. The Court shall grant an order authorizing a videotaped deposition if it finds by a preponderance of the evidence that:

(a) the child will suffer severe emotional or mental strain if required to testify in open court; or

(b) further delay will seriously impair the child's ability to recall and relate the facts of the alleged offense.

II. A videotaped deposition taken pursuant to this section shall be conducted before the judge, or court-appointed master, at such a place as ordered by the court, in the presence of the prosecutors, the defendant and his attorneys, and such other persons as the court allows. Examination and cross-examination of the child shall proceed in the same manner as permitted at trial. Such deposition shall be admissible into evidence at trial in lieu of any other testimony by the child.

III. Unless otherwise ordered by the court for good cause shown, no minor victim or witness whose deposition is taken pursuant to this section shall be required to appear or testify at trial.

IV. The court shall adopt any rules necessary to implement the provisions of this section.

This proposal has a number of important features. A video-taped deposition can only occur as a result of specific judicial findings, thereby eliminating any defense for claims of possible abuse by the prosecution. In addition, it addresses the concern of many victims' advocates that inappropriate questioning occurs during depositions by mandating that the deposition take place before a judge.

C. Hearsay Exception

The Senate Select Committee proposes a new hearsay exception admitting an out-of-court statement made by a child victim regarding any sexual act.

We believe that at this time it is not necessary to create a special hearsay exception for out-of-court statements by child victims of sexual offenses. If the legislation authorizing the use of videotaped depositions in lieu of live testimony is enacted, out-of-court statements made in such a deposition would be admissible at trial. Moreover, under the newly adopted New Hampshire Rules of Evidence a court may admit material and probative hearsay statements attributed to a child victim under the residual exception of the hearsay rule provided it finds sufficient indicia of reliability. See New Hampshire Rule of Evidence 803 (24).

D. Child Advocate

The Senate Select Committee also proposes the implementation of a program in Superior Court whereby child victims are appointed counsel. It is the Council's belief that appointment of an advocate for the child victim would hinder the progress of the case to trial. The establishment of a victim assistance program under the auspices of the Office of the Attorney General would address the concerns raised in the Senate report without needlessly complicating the judicial proceedings and delaying resolution of the case.

E. Anatomically Correct Dolls

The subcommittee concurs with the Senate that the use of leading questions and anatomically correct dolls will enable child victims to more easily and effectively relate the abuse they have suffered.

F. Scheduling Child Victim Cases

Statistics available suggest that most child abuse cases move with relative dispatch through the judicial system with an average time from entry to disposition of six-to-nine months. Nonetheless there are some cases which have remained open for as long as two years. Child advocates maintain that sexual abuse cases which take a long time to prosecute harm child victims, because the child is unable to resolve the fear or anxiety connected with the crime until the case is finally closed. Moreover, the delays make it more difficult for the child to remember the incident. With a view toward expediting trials of these cases, we recommend that the Supreme Court amend Superior Court rules to require that a pre-trial discovery conference be scheduled within a short period following arraignment. The conference would establish a discovery schedule which satisfies the defendant's right to the evidence to be used against him or her and which enables trial to proceed expeditiously. The suggested rule is set out below:

Superior Court Rule 62A:

> All criminal cases in which a minor child is a complaining witness shall be scheduled for a preliminary pre-trial conference within 60 days of the date of indictment for the purposes of establishing a discovery schedule and providing such orders concerning the taking of such depositions and other discovery as may be necessary.

G. Delinquency Proceedings

This report has been limited to problems affecting child victims and witnesses in the criminal justice system. Although delinquency proceedings under RSA 169-B are not criminal proceedings, the Council wishes to call attention to RSA 169-B:34 which limits attendance at delinquency hearings to "...the parties, their witnesses, their counsel, the county attorney, the attorney general and the representatives of the agencies present to perform their official duties..." It has been alleged that this statute has been construed to mean that a witness who is a minor may not be accompanied by an adult when testifying in delinquency hearings. The Judicial Council does not read RSA 169-B:34 so narrowly. Rather, we believe that it permits child witnesses to be accompanied by a supportive adult in the discretion of the court. In our view, the child witness may be a party, and a supportive adult may act as an aid to the witness' counsel. However, if the Senate believes it is necessary to be more explicit, we recommend the addition of the following underlined language to RSA 169-B:34:

> 169-B:34 Court Sessions. All juvenile cases shall be heard separately from the trial of criminal cases, and such hearing shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, their counsel, the county attorney, the attorney general and the representatives of the agencies present to perform their official duties shall be admitted. <u>If a witness has not yet reached the age of majority, the judge may permit the witness' parent or other appropriate adult to be present during the witness' testimony.</u> In those cases where the delinquent act complained of would constitute a felony if the act of an adult, the attorney general and the county attorney of the county in which the offense took place shall receive notice thereof by the court.

REPORT OF THE JUDICIAL COUNCIL ON SENATE BILL 38
RELATIVE TO DE-UNIFICATION OF THE NEW HAMPSHIRE BAR[1]
April 10, 1985

After careful review of the matter, the Judicial Council has concluded that the provisions of Senate Bill 38 for de-unification of the New Hampshire Bar are contrary to the public interest, and accordingly we urge you to vote against this legislation.

The unification of the New Hampshire Bar was accomplished under the authority of the New Hampshire Supreme Court and Senate Bill 38 is designed to reverse that action. On December 31, 1968, the Court authorized the establishment of a unified bar for a period of three years. On June 8, 1972, the Supreme Court reviewed the accomplishments of the unified bar and continued unification indefinitely.

The unified bar, an organization of all New Hampshire lawyers, has been able to sustain a number of programs which have a direct benefit for New Hampshire citizens. Among these programs are the Pro Bono Referral Services; Reduced Fee Service; Lawyer Referral Service; the Client Indemnity Fund; the Law Related Education Program and publication of a significant number of free public information pamphlets. Moreover, the public derives indirect benefit from the extensive continuing legal education program run by and for members of the bar to keep them current with recent developments in the law. The involvement of all New Hampshire lawyers in the bar has made it possible to develop, establish and operate these programs with a dedicated staff. Without unification these programs simply would not have been as effective or expansive as they have over the past 16 years. We urge you to consider the substantial public benefit which has been conferred by these programs over the years.

The New Hampshire Pro Bono Referral Services, which makes available to the public legal services of members of the bar at no cost, served 5,000 citizens last year. The Pro Bono system handled 1,000 - 1,500 cases involving 10,000 hours of free legal service. The Lawyer Referral Service assisted 5,000 - 7,000 citizens last year, and the Reduced Fee Service has been implemented for those who do not qualify for free services.

The Law Related Education Program, in conjunction with the Supreme Court, has provided direct service to teachers of law courses in the public school system, and has developed a library of materials to support these school programs. The Association has also published free public information booklets on 10 different areas of the law including: consumer protection, law, divorce, wills, criminal arrests, automobile accidents, bankruptcy, sale of a home, and workers compensation.

These programs for the public would not exist in such number or broad scope, if the bar had not developed them with the support and involvement of

---

1. This report was presented again during the 1986 Session when the same measure was introduced as Senate Bill 26 and defeated again.

all lawyers in the state. There is no doubt these programs would be impaired and the public interest ill-served by enactment of Senate Bill 38 to de-unify the bar.

In addition to the question of public interest, the bill raises other significant issues, which deserve careful consideration. The unified bar operates under the direct supervision of the Supreme Court, and a petition can be filed with the Court at any time to further consider the matter of the unified bar. Since the Court's order in 1972, under its continuing jurisdiction, providing for a permanent bar structure, no member of the bar association has petitioned the Court for alteration of the unified bar.

Furthermore, we believe that there is a substantial question as to the propriety of the Legislature acting in this area, in which the Court has exercised its jurisdiction. In addition to the public benefits which flow from a unified bar, we think the Legislature should consider whether it wants to raise the issue of separation of powers between the Legislative and Judicial branches of state government.

In our judgement, Senate Bill 38 poses serious constitutional questions which would alone justify an unfavorable recommendation.

Considering the benefit to the public of the services made possible by the present structure of the bar, the fact that the Supreme Court has jurisdiction of the matter and can hear a petition at any time concerning the unified bar and the fact that no lawyer has formally raised any objection, the Council recommends against enactment of Senate Bill 38.

REPORT OF THE JUDICIAL COUNCIL ON RSA 561:3
RELATIVE TO INTESTATE DESCENT AND DISTRIBUTION AMONG COLLATERAL HEIRS
(Recommendation incorporated in House Bill 154, 1986)
May 17, 1985

On March 18, 1985, the Supreme Court of New Hampshire decided the matter of In Re Estate of Yvonne Martineau 126 NH 250 in which the Court calls to the attention of the General Court a facial conflict between RSA 561:1,II-d and RSA 561:3. Both statutes address methods for distributing intestate estates. Both apply the right of inheritance by "representation," a right that arises when the issue of a deceased person take, or inherit, the share of the estate of another which their immediate ancestor would have inherited were he living.

RSA 561:1,II(d) provides as follows:

> If there is no surviving issue, parent or issue of a parent but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

RSA 561:3 provides as follows:

> No representation shall be allowed among collaterals beyond the degree of brothers' and sisters' grandchildren.

The primary issue presented to the court in the Martineau case was whether the limitation upon representation in RSA 561:3 applies to collateral heirs not descendants of brothers and sisters.

An intestate estate is the estate of any person who dies without having made a will. The property of these persons is distributed in accordance with statutory rules referred to as descent and distribution. In essence, the laws of descent and distribution are a will made by the state for a person who has not made one of his own. Any person of sound mind over the age of 18 years may make his or her own will. When a valid will is made, the person making it may direct the disposition of property as he sees fit, and the laws of descent and distribution have no application. RSA 561:1,II(d) and RSA 561:3, referred to above, and the comments in this paper refer only to intestate estates and do not in any way affect a person's right to dispose of property as they see fit by making a will.

A review of RSA 561:1 reveals that the term "representation" is used throughout that provision. RSA 561, however, does not provide any guidance as to the existence of any limitation upon the right of representation. The only

limitation on representation set forth is RSA 561:3, quoted above, which facially appears to limit its application to the class of brothers' and sisters' descendants. Since RSA 561:1 contains no explicit limitations on taking by representation and RSA 561:3 does, at least as to a limited class of persons, the two statutes, if taken literally would provide for anomalous situations. For example, under a strict application of both statutes a deceased person's brother's great grandchildren would not be entitled to take by representation but a decedent's first cousin once removed (second cousin or the child of the first cousin) would inherit by representation.

The Supreme Court has suggested that the General Court clarify this ambiguity by repealing RSA 561:3 or by an amendment thereto clarifying the scope of RSA 561:3. Although the repeal of RSA 561:3 would offer the simplest solution, other policy considerations may warrant a clarifying amendment.

The underlying policy issue presented is whether there should be any limitation upon the right to inherit by right of representation and, if so, where that line should be drawn.

The repeal of RSA 561:3 would result in the right of representation being extended to all collateral representatives regardless of their degree of relationships. Thus, it is conceivable that first cousins two or three times removed (first cousin's grandchildren and great grand children) could inherit with aunts and uncles. Policy considerations of the legislature in considering an adoption of this option are the increased remoteness of the relationships and the division of estates into infinitesimal shares. This approach presents further problems in the identification and location of these remote heirs. This can become a significant burden in small- and even medium-sized estates.

Should the legislature choose the option of amendment of RSA 561:3, the decision must be made as to where the line of the right to representation should be drawn.

Collateral heirs, those persons who share in an estate who are not direct lineal ascendants nor descendants of the deceased, are presently limited to take by representation at the fourth degree of relationship. This arises both from RSA 561:3 and the Court's interpretation of that provision in the Martineau case cited above. Degrees of relationship are determined by the distance, or number of removals, which separate persons of the same blood. A brother is separated from oneself by parents so he is of the second degree. Likewise, grandparents are of the second degree as are grandchildren. Persons of the fourth degree are therefore identified as great-great-grandchildren, grand nieces and nephews, and first cousins. Limitation of the right of representation to the fourth degree of relationship cures the problems that would be created by the mere repeal of RSA 561:3 by creating a specified and limited class of persons to whom property could descend by right of representation. The persons within this class are all of those persons within traditional boundaries of familial closeness without becoming unreasonably distant. The legislative drawing of this line means that persons beyond it are cut off from inheritance. In such cases should there be no living person within any of the four degrees of relationship, the intestate estate would escheat, or be taken, by the State of New Hampshire.

The legislature is free to enlarge the number of different classes of persons entitled to take or inherit by extension to the fifth or sixth degree, or beyond. It is also free to constrict the number to the third degree. The Judicial Council is of the opinion, however, that the best interest of the public would be served by establishing the right of representation at the fourth degree.

It is again important to keep in mind that this amended statute applies only in those cases where the deceased person made no will. Should a person make a will he may give his property to whomever he desires even if it is beyond the fourth degree of relationship.

The Judicial Council therefore recommends that RSA 561:3 be amended by striking the words "the degree of brothers' and sisters' grandchildren" and inserting the words "the fourth degree of relationship to the decedent" in place thereof.

TESTIMONY ON SENATE BILLS 96 AND 91 RELATIVE TO
THE INSANITY DEFENSE AND A GUILTY-BUT-MENTALLY-ILL DEFENSE[1]
January 29, 1986

I appear today as Chairman of the New Hampshire Judicial Council on behalf of the Council. It was the sense of the New Hampshire Judicial Council, which I reflect here today, that we would not take a position for or against the various proposals concerning abolition of the insanity defense and concerning the guilty but mentally ill verdict.

These proposals and the issues that they raise have been debated repeatedly over the past 7 or 8 years. This is a difficult and troubling issue. I am inclined to think there is no simple solution to this problem, no matter what direction you [take]. It is difficult primarily because, at this point in our civilization, we do not know enough about the way in which people are affected by their psychiatric problems. Justice Doe, Chief Justice of our State Supreme Court a century ago, recognized that neither science nor the law understands these kinds of problems well enough to deal with them in a precise way. And so we have a unique rule in New Hampshire which makes the question of insanity a question of fact for the jury to decide. Justice Doe said that we would let the jury decide the ultimate question of responsibility, and we would eschew various legal tests. To the extent possible we would avoid having psychiatrists give dispositive information on these issues to the jury. The Doe rule has worked very well for nearly a century.

In the mid-1970's we had some very, serious problems develop, and I was a prosecutor at that time. During the 1970's there grew among the professional staff at the Forensic Unit, which has a critical role to play in this system in New Hampshire, a recognition that the New Hampshire insanity rule was different from any other and subject to some interpretation. And so, speaking as a prosecutor involved in a lot of cases back then, I can tell you that psychiatrists, who previously only testified that defendants were mentally ill or insane when they were psychotic, offered testimony in case after case that defendants were insane when they merely suffered from neuroses and personality disorders. In my judgement, that distorted the system rather significantly.

The next significant [development] resulted from ... cases decided by the New Hampshire Supreme Court, one of which was authored by Justice Douglas, and which had a profound impact on the problem. The Court decided ... that the burden of proving insanity under the New Hampshire rule would be shifted to the defendant. It was no longer the prosecution's duty to eliminate the issue of insanity by proof beyond a reasonable doubt. And the court also held in State v. Hess that the jury was free to entirely disregard ... expert testimony. They could discount it all the way to zero if they wished to do so. I think that this decision is clearly consistent with Justice Doe's theory which is that the question is not one of law but one of fact. That is, we can't do better than ask twelve people from the community what they think

---

1. Presented by Gregory H. Smith, Chairman, at the request of the Judiciary Committee of the New Hampshire Senate.

about the ultimate issue of responsibility. And creating legal constructs to deal with the question of insanity really isn't helpful. So in this state, all of the testimony, including expert testimony can be given to twelve jurors who will then decide whether or not it is just to hold an individual responsible for a crime.

Let's look at what happened after those changes by the Supreme Court. After having had 3 to 4 insanity acquittals each year in significant cases prior to 1978, there were eight murder trials in the next six years in which defendants raised the insanity defense, and the State won all eight of them. The defendants were found guilty, and the juries rejected the plea of insanity. I think that is rather significant evidence to be taken into account in wrestling with this very tough issue. Five psychiatrists may come in and play the kind of games that Peter [Delphausse] is talking about and testify on behalf of their patient because they believe that it is right to do so. The judge instructs the jury, nevertheless, that that testimony can be disregarded entirely. Lastly, it is no longer the case that the jury [is instructed] that the prosecutor [must] prove the person is sane; now the defense, with the psychiatric testimony discounted somewhat, bears the burden of showing that that person is insane. And the defense [of insanity] has not [prevailed] in significant cases.

I think that it is important to bear in mind that it is the cases that are the most noteworthy, usually where violence and extreme violence are an issue, that ... propel [this issue] into the forefront of public awareness. It is the murder trials, the attempted murders and the violent assaults. It is true that someone can plead insanity in a bad check case. But, for the most part, those kinds of cases don't present the kind of public safety situations which are so compelling and which concern this committee. It is the violent cases.

I would like to look just for a minute at the various proposals that have been offered to you. Many of them, as I said earlier, have been considered before. First, I think that we ought to keep in mind that, after the changes that I have described, the population of the forensic unit dropped from somewhere on the order of 120 patients in 1977 or 1978 to half that number. My recollection is that it was later reduced to 30. So it went down by 75%-because the people weren't coming into the system anymore when the rules of the game changed.

I think that the issue has arisen recently from a particular case, a tragic one, one about which we shouldn't leap to any conclusions yet because there hasn't been any conviction; but one nevertheless, which has attracted everyone's attention. There is nothing wrong with that. [The public debate has] focused on the way in which defendants [enter] the forensic unit, and I think that was very significantly dealt with in the 1978 period. I think that today the problem lies elsewhere; in the way in which people are released. I have thought for a long while that [should be the focus of our concern], and the Legislature has considered that issue.

The problem is that there is not enough supervision of people who have been released ... into the community. It would not be all that difficult to provide for some system so that when people are released from the forensic unit, there is some actual supervision, and reports when something is going

wrong. Instead, the files are full of cases in which people are decompensating, or not doing well, their treatment is failing and no one is paying any attention to the [warning signs]. They are not put back in the forensic unit. That, in my view, is where the real problem is. You in your judgment may decide that some adjustment in the entry into the system is in order and will deal with it. But I suspect that you are going to be frustrated again, because the real problem is at the other end of the system.

Now to deal with the proposals that have been made. You are considering a guilty but mentally ill verdict. In some states where this has been adopted, it has all the features that I have seen in these various bills, except it has one more. And that is that at the time of sentencing the court will take into account the extent to which the person suffered from mental illness at the time of the crime and then discount the sentence in some way to reflect that, sort of a partial insanity defense ... The sentence is then like any other sentence. That feature is not in these bills and I am not proposing that it should be. I am simply pointing out that as you compare these with experiences elsewhere, you may find that there are some differences in the way in which these proposals work. We looked at this very carefully when Justice Souter was Attorney General. In the late 1970's the Attorney General's office gave a lot of attention to this proposal. In fact, we [drafted] one. It was introduced by Senator Monier. As the changes I mentioned to you previously began to make a real difference in terms of what was happening in murder cases however, we [withdrew our support for that proposal, preferring to follow the experience with this procedure in other jurisdictions].

I think that was a prudent course. There was some evidence that in other jurisdictions the guilty but mentally ill verdict was sweeping in people who previously were being found guilty, or on the other hand, the mentally ill who were the worst kinds of cases. People who, as someone has said today, thought they were buttering bread or toast. I don't think that anybody here seriously proposes taking someone who is that profoundly ill and simply treating them like anyone else who has been found guilty.

I have some real concerns in another area. And that is that if you look closely at this proposal, there is a very real prospect that it will generate an expansion, once again, in the forensic unit. The way in which it has been cast here, the jury is going to make a finding that the person who is guilty was nevertheless mentally ill. And the statute says that the person shall receive treatment until it is no longer needed. What it does, it seems to me, is to expand the role of the psychiatric community in these kinds of cases. Once again they will be the people [who will] tell us whether or not any further treatment is appropriate, whether it is really required for this condition, whether it is available. We may be creating a right triggered when a jury arrives at this finding. The defendant may be entitled to treatment.

Keep in mind that under the current system a prisoner can get treatment already. Under the current system a person who is found guilty can be transferred and given treatment. You might want to focus on whether giving the jury this alternate verdict is going to [increase the number of] people [coming] into a system and give them some expanded right of treatment.

I think that it is likely that guilty but mentally ill will [reduce] guilty verdicts. I know of cases, including one that I tried, a first degree murder case in 1979, where the defendant had a psychiatric record that was 4 inches deep. It demonstrated psychotic episodes over a long period so it lent itself to those kinds of issues. We tried it under the new, bifurcated trial procedures, and the defendant was found guilty. I think that if the jury had been offered a guilty but mentally ill verdict with a stack of psychiatric testimony, there is a real possibility that they would have come back with guilty but mentally ill. The prosecution was not claiming that he was not mentally ill. We were claiming that he was not legally insane, even though he was or had been clearly mentally ill. I think that you may find that proposal having an effect counter to what [you expect]; that is, that it will reduce guilty verdicts, rather than reducing insanity verdicts.

As for abolishing the insanity defense, without altering the system in any other way, it is very difficult to predict what will happen there. To raise the matter that we discussed a little earlier, I don't believe that abolishing the insanity defense is going to get the psychiatric testimony out of these trials. The issues of a voluntary act, or the defendant's intent, what Justice Douglas called "mens rea," are still going to be issues in criminal cases. When defense counsel, sometimes very skillfully, want to raise the insanity defense without actually raising the insanity defense, they offer psychiatric testimony on the question of whether the act was a voluntary one. You can't be convicted unless an act was your voluntary act and unless you had criminal intent at the time, i.e., certainly not for any of these serious crimes that we are talking about. When you have the "bread-butterer," the defense is going to [offer psychiatric testimony to the effect] that he didn't know what he was doing, that it was not a voluntary act, or that he didn't have a purposeful state of mind to kill that is necessary for first degree murder. In an effort to get a not guilty verdict - or, in effect, a diminished capacity result - the defense will try to establish that the defendant couldn't have had the kind of mental state necessary for conviction on very serious offenses.

[Secondly] I have a great deal of faith in the jury system, having dealt with petit jurors and having had the privilege of dealing [frequently] with grand jurors. I think jurors want to do the right thing. Jurors are going to be instructed on having to find that the person had the requisite intent. And if they hear all this testimony, and they are convinced that the defendant didn't have that kind of intent, they are going to go back into the jury room and say, "How in the world did the legal system put us in this position? Here we are sitting in the jury room trying to decide [what the person should be convicted of] first degree murder when we know well that he committed [the crime]. [Commission] of the offense really wasn't contested in the case. It is what would have been an insanity case in the past. And [the jury] has heard testimony about how crazy the defendant is, and [would] have the choice of finding him guilty or not guilty." If they follow their oath, they are going to have to find the defendant not guilty in serious cases. Query whether that is a good result, whether that is going to build confidence in the system. My experience has been that when jurors feel that they have been put in that kind of a box, they resent it. They don't understand why the law instructs them to come back with these kinds of artificial verdicts which don't fit the evidence. I think that you have that kind of a problem, and I

think that jurors are likely to come back with not guilty. And come out very frustrated.

Again, I should point out that [the Council is] not taking a position for or against these proposals, but we do think that there are a number of very difficult issues that these proposals raise, and there probably isn't any simple solution to this problem. I wish there were. But I doubt that there is.

To conclude, as I said earlier, I think that the real focus of concern has got to be on release. That's where the problem is. That's what generates the public protection problems. I would add one more comment. One of the proposals that has surfaced in this legislative session would increase the period of recommittal from 5 to 10 years. I would urge some caution in reviewing that proposal because there is a body of case law to suggest that you may have an equal protection problem if the period of recommittal for those found not guilty by reason of insanity is significantly different from the period that they would probably [have to serve] if they had been convicted of the crime. It was with that issue in mind that we earlier raised the recommittal period from 2 to 5 years for criminal cases and had to do it for the civil cases as well. There is nothing magic in 5 years, but the penalty for a Class B felony is 3.5 to 7 years. There is some evidence that over decades that the average sentence or the median sentence is something like 6 years in New Hampshire. So five years is not all that different from what happens in ordinary cases.

The tether [to keep control of those who are released] is an idea which has been put forth before, but it [hasn't gained much support], and nobody has really tried to deal with it. How can we have insane persons on a parole system that works? [Assign supervisors with] a duty to pursue proper monitoring — whether it is to link up with the police department in the community, to have the individual arrested if there are complaints about him, to report back to the prosecution, or by some other means. It has always puzzled me why we have these kinds of cases that are a concern to everyone who comes in contact with them, but very little is done at that end of the system and that is where the problem is.

Senator McLane: Please review the three changes in 1978 related to the standard of proof required, the burden of proof, and the jury being able to disregard any testimony. What did they change the standard from? From preponderance to ——— ?

Before the change, in State v. Novosel, the state had the burden of disproving insanity, once it was raised, by proof beyond a reasonable doubt. And if five psychiatrists lined up on the other side to say the defendant was insane, it was almost impossible to prove beyond a reasonable doubt that the person was sane. Anyone listening to the testimony would have to have a reasonable doubt about it. The court shifted the burden so that once the state proves guilt, the defendant has the burden of proving that [he] is insane by a preponderance of the evidence ..... It was a very significant change.

AMENDMENTS TO HOUSE BILL 91
RECOMMENDED BY THE NEW HAMPSHIRE JUDICIAL COUNCIL[1]
January 14, 1986

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and eighty-six

AN ACT

relative to service of civil process.

Be it Enacted by the Senate and House of Representatives
in General Court convened:

1 Service of Process, Manner. Amend RSA 510:2 as amended by striking out said section and inserting in place thereof the following:

510:2 Manner. All writs and other processes shall be served by giving to the defendant or leaving at his abode an exact copy thereof or by mailing an exact copy to the mailing address of the defendant or, in the case of a non-incorporated business defendant, at the business address or the address of its designated business agent, by certified mail, postage prepaid.

2 Contents of Writs and Processes. Amend RSA 510:2-a as inserted by 1973, 260:1 by striking out said section and inserting in place thereof the following:

510:2-a Contents of Writs and Processes; Service by Person or Mail; Attachments.

I. Whenever service is made by the sheriff, deputy sheriff or other person authorized by law, the person making service shall indicate on all writs and other processes at the time they are served upon the defendant the time, place and mode of service made upon the defendant.

II. Whenever service is made by certified mail, the defendant's return receipt and an affidavit of the plaintiff or his attorney in compliance with RSA 510:2 shall be appended to the process and filed in court with it.

III. All writs and other processes shall at the time they are served upon the defendant indicate any attachments made upon the property of the defendant and the time, place and method of such attachments.

---

1. House Bill 91 was voted inexpedient to legislate in the Senate.

New Section
3 Service of Process on Corporation. Amend RSA 293-A:14 by striking said section and inserting in place thereof the following:

293-A:14 Service of Process on Corporation.

I. The registered agent so appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Service of process on a registered agent shall be made at the address of the registered agent listed with the secretary of state as the registered office of the corporation.

II. Nothing contained in this section shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

New Section
4 Amend Corporations RSA 510:14 by striking "clerk" and substituting therefore the following:

510:14 Corporations. Service of writs against other corporations may be made upon the secretary, treasurer, cashier, or one of the directors, trustees or managers, if any, in the state, and otherwise upon any principal member or stockholder, or upon any agent, overseer or other person having the care of any of the property or charge of any of the business of the corporation.

5 Effective Date. This act shall take effect January 1, 1987.

REPORT OF THE JUDICIAL COUNCIL ON HOUSE BILL 36
RELATIVE TO SETTLEMENTS ON BEHALF OF MINORS AND LEGACIES
TO MINORS NOT UNDER GUARDIANSHIP
January 16, 1986

House Bill 36 concerns itself with two statutes that were designed to protect the financial interests of minor children. The first of these, RSA 464-A:42, requires the Superior Court to approve all settlements in civil actions brought on behalf of a minor unless the settlement amount is less than $1,500. This statute further allows the Court to issue orders requiring an accounting of all money received on behalf of a minor child whether the money was received through settlement, decree or other order.

The second statute, RSA 561:20, concerns legacies to minors. It permits the Probate Court, upon petition, to pay legacies of $1,000 or less to the minor's parents or to another person standing in loco parentis to the minor. Thus, when relatively small sums are involved, the parents can avoid the cost of a guardianship for the term of the child's minority.

House Bill 36 would increase the threshold amounts in these two statutes. Section 1 of the bill would raise from $1,500 to $5,000 the amount below which settlements need not be approved by the Superior Court. This amount was last increased in 1979.

Having conferred with representatives of the Superior Court, we recommend that the current $1,500 amount in RSA 464-A:12 be retained. Procedures for protecting minors under the current threshold have been working well and generally involve nominal cost to the parties. Even with the $1,500 level, the amounts could be substantial. First, it should be noted that this amount represents the amount in excess of medical and similar costs paid on behalf of the child to third parties. Thus the effective size of the threshold is higher than might at first be apparent. Secondly, since this may be a sum invested at interest under court order for the benefit of a child, the ultimate benefit from such a settlement can become substantial. For example, a $1,500 settlement to an infant invested long-term at 10% annual interest would grow to $8,339 by the child's 18th birthday. Finally, court representatives advise that families involved in these settlements appear to be pleased with the way they are being handled at the current time.

Section 2 of the bill would raise to $5,000 the amount below which a legacy to a minor need not be subject to the formal reporting requirements of a guardianship. This amount has not been increased since 1963, and the increase seems to be justified by inflation. Here the issues are quite different from those involved in Superior Court settlements because without such an increase the amounts would be subject to continuing court process through required guardianship accounting. This, of course, would impose continuing administrative work on the part of the parties and the probate courts.

If the General Court decides to increase this second amount, the Judicial Council would recommend that RSA 561:20 be further amended to give the Probate Court some standards for deciding whether or not to grant a petition to pay

the legacy directly to the parents or other person. In addition, we recommend an amendment giving the Probate Court authority, such as the Superior Court already has in RSA 464-A:42, to require appropriate accounting if such a petition is granted.

Thus we would recommend the addition of the following language in RSA 561:20:

> When considering such a petition the probate court shall determine the best interests of the minor.
>
> If such a petition is approved by the probate court, the court may make all necessary orders for protecting the interests of the minor and may require the parents or parent or other person to give bond to truly account for all money received on behalf of the minor.

TESTIMONY ON HOUSE BILL 58
RELATIVE TO STRICT LIABILITY FOR HAZARDOUS WASTE CLEANUP
AND PRIORITY OF STATE LIENS ON CERTAIN PROPERTY [1]
January 23, 1986

The New Hampshire Judicial Council has reviewed House Bill 58 in the context of the broad public purposes to be served by hazardous waste legislation and offers the following evaluation of the legal considerations raised by this legislation. House Bill 58 strikes a balance between the public interest in effective hazardous waste clean up legislation and a reliable title recording law.

New Hampshire has adopted hazardous waste laws similar to federal legislation in this area. See Resource Conservation and Recovery Act, (RCRA) 42 U.S.C. S6901 et. seq. and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. S9601 et. seq. (CERCLA or Superfund). These laws permit the federal government to recover the cost of cleaning up hazardous waste sites from those who generate or transport or dispose of hazardous waste as well as those who, without an active role, simply own the sites.

The original New Hampshire hazardous waste statutes were an attempt to track this federal legislation fairly closely. However, the existing state statute imposes significant liability on persons not affected by the federal law. While the federal law provides an exemption for certain third parties and lenders whose only interest in the property is as the holder of collateral security for an obligation owed to a lender by the owner of the property, the New Hampshire law currently makes no distinction with regard to those who by the mere fact of ownership alone are made liable under federal law for cleaning up these sites.

House Bill 58 would add this federal exemption to the State statute. The bill would expressly exempt any person who, without participation in the management or actual operation of a facility, holds the indicia of ownership primarily to protect a mortgage on real property on which a facility is located. In addition, the bill would exempt any person from liability who can establish by a preponderance of the evidence that the release of hazardous waste was caused by an act of God, an act of war, or an act or omission by a third party who is not an employee or agent of the person who caused the damage. In this way, mortgage holders would not be subjected to the rigors of the hazardous waste cleanup statute.

House Bill 58 would also reconcile the recording statutes with the superlien for state cleanup costs by providing the public with notice of the assertion of a lien pursuant to NH RSA 147-B. Under the current law, the State has a lien for costs incurred by the State in cleaning up a contaminated site. This lien has priority over all liens on the property of the person liable but there is no requirement that the lien be recorded. The amendments

---

1. Presented by Gregory H. Smith, Chairman.

proposed in House Bill 58 are intended to balance the interest of the State in recovering the costs against the interest of the public in relying upon the records of the Registry of Deeds. The bill would require the State to record notice of its lien in the appropriate registry of deeds or the Secretary of State's Office. While this new recording procedure would improve the notice to parties of liability associated with certain parcels of real estate, the bill would still preserve the essential characteristics of the superlien. The lien, once recorded, would take priority over all other liens on that property.

CHAIRMAN'S REPORT ON HOUSE BILL 47 RELATIVE TO COMPARATIVE FAULT, APPORTIONMENT OF DAMAGES AND CONTRIBUTION AMONG TORTFEASORS

Senate Bill 68, relative to comparative contribution, introduced during the 1985 Session of the General Court, passed the Senate and was referred by the House of Representatives to the Judiciary Committee. In testimony before the House Judiciary Committee in April of 1985, the Chairman of the Judicial Council requested that the Committee recommend that Senate Bill 68 be sent to interim study. Noting that Senate Bill 68 applied, in piecemeal fashion, language from the Uniform Comparative Fault Act (UCFA)[1], the Chairman suggested that in its present form the bill would create uncertainty and hence invite litigation to determine legislative intent. He recommended interim study to allow sufficient time to re-draft it and to create a clear legislative history.

Senate Bill 68 was referred to interim study, and the Judicial Council worked with the interim study subcommittee, providing technical assistance and keeping the official record of the subcommittee meetings. The subcommittee considered extensive testimony from representatives of both plaintiffs and defendants as well as input from the National Commission on Uniform State Laws. The subcommittee's final draft became House Bill 47 in the 1986 Session of the General Court. The Judicial Council supported House Bill 47 as a fair and reasonable mechanism for enabling defendants to spread the cost of damages.[2]

House Bill 47 made the following changes in the existing law:

1. RSA 507:7-a, Comparative Negligence, was repealed and re-drafted as RSA 507:7-d, Comparative Fault. Throughout, the word "fault" replaces the word "negligence" to codify the New Hampshire Supreme Court's decision recognizing the doctrine of "plaintiff's misconduct" applicable in product liability cases even where "negligence" is not the ground for recovery. Language was inserted in the middle of this paragraph to reaffirm the rule that the fault of the plaintiff is to be compared against the fault of the defendants in the aggregate. Hurley v. Public Service Co. of New Hampshire 123 NH 750, 456 A2nd 1217 (1983). Provisions in the existing statute for apportionment of damages among defendants were deleted from this section and are dealt with under RSA 507:7-e.

2. RSA 507:7-b, Release or Covenant Not to Sue; Joint Tortfeasors, was repealed and re-drafted as RSA 507:7-h, Effect of Release or Covenant Not to Sue. The new paragraph protects settlors from any contribution action against them in accordance with the provisions of the UCFA and with the former RSA

---

1. Uniform Comparative Fault Act, drafted by the National Conference of Commissioners on Uniform State Laws, as amended August 3 -10, 1979.

2. Although House Bill 47 was killed, its provisions were incorporated in an omnibus tort reform bill, House Bill 513, which was adopted late in the Session and became Chapter 227, Laws of 1986.

507:7-b. This section departs from the UCFA, in keeping with existing New Hampshire law, by providing for the settlement to reduce the plaintiff's claim by the consideration paid for it, not the proportionate share of the fault attributable to the settling party.

3. RSA 507:7-c, Inadmissible Evidence; Post Verdict Procedure, was repealed and re-drafted as 507:7-1, Inadmissible Evidence; Post Verdict Procedure. There were no substantive changes.

The remaining sections of House Bill 47 were derived from the UCFA, with changes as noted below:

1. The new RSA 507:7-e, Apportionment of Damages, applies apportionment of damages to all cases involving more than one defendant, not merely the cases where the plaintiff is found to be at fault. It maximizes the use of general money award verdicts and avoids the two-step approach of the UCFA. That approach would have the jury deduct for contributory negligence, then set percentages of fault for each defendant to be multiplied by the plaintiff's reduced award, to arrive at each defendant's proportionate share. The concern with the latter approach is the possibility of unintended double deduction of the plaintiff's award. The time for reallocation of proportionate shares due to uncollectibility has been shortened from the UCFA's one year to 60 days.

2. The new RSA 507:7-f, Contribution Among Tortfeasors, which is adapted from Section 4 of the UCFA, creates the right of contribution. This provision allows defendants to bring contribution claims against others who may have caused injury to the plaintiff, but whom the plaintiff has not sued. Paragraph I adds language not in the UCFA to clarify that there is no right of contribution against a person who is immune to the claim and no right of contribution against a claimant at fault. This paragraph also departs from the UCFA by requiring that contribution actions be brought separately from the principal action with two exceptions as specified in RSA 507:7-g, I and IV. In another departure from the UCFA, the right of contribution is made available not only in tort cases involving joint tortfeasors but also where the parties share liability although they are not deemed joint tortfeasors under existing law.

3. The new RSA 507:7-g, Enforcement of Contribution, paragraphs I - III, is essentially section 5 of the UCFA. The language has been made gender neutral, and the phrase "in the same action, or by separate action," has been added at the end of paragraph I. Paragraph IV has been added to provide for arbitration of separate contribution claims unless the plaintiff or defendant elects otherwise. Paragraph IV provides that a contribution action may be consolidated with the main action "if and only if the plaintiff in the principal action agrees."

TORT REFORM, 1986 SESSION

INTRODUCTION

A number of bills described as tort reform were introduced during the 1986 Legislative Session. In the two reports on the following pages, which were presented to the Senate Insurance Committee and the House Judiciary Committee in February and March of 1986, the Judicial Council provided discussion of some of the legal issues in the 1986 tort reform package. The issues addressed by the Council included proposals to codify the bar against punitive damages, to change the collateral source rule, to hold a public entity or employee harmless for injury caused by "pollution incidents" if the defendant acted in accord with generally prevailing scientific knowledge, to place a cap on damages against a municipality, to diminish consortium awards based on the comparative fault of the injured spouse, to penalize plaintiffs who file frivolous lawsuits, to create a testimonial privilege for medical care providers and a special expert rule in medical malpractice cases, to require itemized verdicts, to put a cap on non-economic damages, to require periodic payments of future damages in excess of $50,000, and to put a cap on damages against members of charitable institutions. The Judicial Council also offered testimony in opposition to reducing the statute of limitations to three years (and to two years for medical negligence actions).

House Bill 47, relative to comparative fault, apportionment of damages and contribution among tortfeasors, was also considered part of the tort reform package. The Judicial Council's support of that legislation is discussed on page 33.

Below is a list of the tort reform bills. Only House Bill 513, an omnibus bill, and House Bill 160 were adopted.

- Senate Bill 78 relative to comprehensive tort reform.

- Senate Bill 55 relative to the statute of limitations for personal actions.

- House Bill 7 relative to damages recoverable for bodily injury in civil actions (original title). New Title: relative to alcohol beverage licensee liability.

- House Bill 47 relative to comparative fault, apportionment of damages and contribution among tortfeasors.

- House Bill 53 relative to municipal liability (original title). New title: relative to limitations on liability.

- House Bill 160 establishing a collateral source rule for tort liability (original title). New Title: repealing certain statutory rules of evidence and relative to the non-delegation of the insurance commissioner's rulemaking authority. Adopted. Chapter 210, Laws of 1986.

- House Bill 267 establishing a commission on municipal liability and making an appropriation therefor.

- House Bill 283 relative to comparative negligence in calculating damages for loss of consortium claims.

- House Bill 329 relative to personal injury actions and medical malpractice litigation (original title). New title: relative to commercial general liability insurance, medical injury actions, and a commission on tort law and insurance availability.

- House Bill 338 relative to frivolous lawsuits (original title). New title: penalizing frivolous lawsuits and outlawing punitive damages.

- House Bill 513 relative to tort reform and insurance. Adopted. Chapter 227, Laws of 1986.

Footnotes

1. Amendment to Senate Bill 78 presented to the Senate Insurance Committee on January 23, 1986, by Martin Gross, Counsel for the American Insurance Association.
2. House Bill 160 and Senate Bill 78
3. House Bill 53 and Senate Bill 78
4. Id.
5. House Bill 283 and Senate Bill 78
6. House Bill 338
7. House Bill 329
8. House Bill 329
9. House Bill 7 and Senate Bill 78
10. House Bill 329
11. Gross Amendment to Senate Bill 78
12. Senate Bills 78 and 55
13. House Bill 329

REPORT OF THE JUDICIAL COUNCIL
ON SENATE BILL 78
RELATIVE TO COMPREHENSIVE TORT REFORM
February 6, 1986

1. Punitive Damages

The rule in New Hampshire, as articulated by the Supreme Court prohibits the award of punitive damages. Crowley v. Global Realty, Inc., 124 N.H. 814, 819 (1984). The clearest expression of that rule in recent times comes from Justice Lampron's opinion in the case of Vratsenes v. New Hampshire Auto, Inc., 112 N.H. 71,73 (1973): "No damages are to be awarded as a punishment to the defendant or as a warning and example to deter him and others from committing like offenses in the future. In other words, no damages other than compensatory are to be awarded."

2. The Difference between Punitive Damages and Enhanced Compensatory Damages.

The quotation from Vratsenes, supra, continues, "However, when the act involved is wanton, malicious, or oppressive, the compensatory damages awarded may reflect the aggravating circumstances." Id. at 73.

A survey of the relevant case law leads to the following conclusions. First, the circumstance which gives rise to the application of punitive damages is the same as for enhanced compensatory damages, namely, conduct which can be characterized as wanton, malicious, or oppressive. Second, the purpose of punitive damages is to punish the actor, while the purpose of compensatory damages is to compensate the victim of the act. Third, as a result of those different purposes, the calculation of punitive damages focuses on the actor, his mental state and other circumstances, while the calculation of enhanced compensatory damages focuses on the harm suffered by the victim.

Justice Lampron's opinion in Vratsenes includes a description of the historical development of the doctrine of enhanced compensatory damages in New Hampshire.

> The issue before us on this appeal is whether punitive or exemplary damages can be awarded in this jurisdiction in the present action.
>
> "Exemplary, or punitive, damages are generally defined or described as damages which are given as an enhancement of compensatory damages because of the wanton, reckless, malicious, or oppressive character of the acts . . . ." 22 Am. Jur. 2d Damages s. 236 (1965). These terms are used interchangeably in most jurisdictions. Typical of torts for which such damages are awarded are assault and battery, libel and slander, deceit, malicious prosecution, and intentional interferences with property such as trespass.

In most jurisdictions exemplary damages are allowed and awarded not by way of compensation but as a punishment to the defendant and as a warning and example to deter him and others from committing like offenses in the future.

However, in New Hampshire, the punitive function of exemplary damages has been rejected in forceful and colorful language. "The idea is wrong. It is a monstrous heresy. It is an unsightly and an unhealthy excrescence, deforming the symmetry of the body of the law." Fay v. Parker, 53 N.H. 342, 382 (1872). This anathema is found in less vitriolic language in Bruton v. Corporation, 87 N.H. 304, 179 A. 185 (1935). Nevertheless, this court in Fay v. Parket supra, and more particularly in Bixby v. Dunlap, 56 N.H. 456, 462 (1876), has recognized that in cases where the acts complained of were wanton, malicious, or oppressive, the compensatory damages for the resulting actual material loss can be increased to compensate for the vexation and distress caused the plaintiff by the character of defendant's conduct.

This same principle has been expressed in the following language: "In a civil action founded on a tort, nothing but compensatory damages can be awarded, but the injured party is entitled to full compensation for all the injury sustained, mental as well as material. In some cases, compensation for the actual material damage sustained will be full compensation. In other cases, the material damages may be trivial, and the principal injury be to the wounded feelings from the insult, degradation, and other aggravating circumstances attending the act." Kimball v. Holmes, 60 N.H. 163, 164 (1880).

The above summary of a century of the jurisprudence of this State pertaining to exemplary or punitive damages leads to certain definite conclusions. No damages are to be awarded as a punishment to the defendant or as a warning and example to deter him and others from committing like offenses in the future. In other words, no damages other than compensatory are to be awarded. However, when the act involved is wanton, malicious, or oppressive, the compensatory damages awarded may reflect the aggravating circumstances.

In this State, as elsewhere, such damages have been held proper in actions of trespass when the acts complained of have been accompanied by aggravation, insult, oppression, or malice. In fixing the amount of damages consideration is to be given to the result of the act itself, and the circumstances surrounding it, among which motive and the presence or absence of provocation. (Citations omitted).

112 N.H. at 73

3. The Collateral Source Rule.

The collateral source rule is recognized and applied in New Hampshire case law. Moulton v. Groveton Papers Co., 114 N.H. 505, 509 (1974) (citing five supreme court opinions dating from 1898). The rule, quite simply, states

if a plaintiff is compensated for his injuries by a source other than the defendant, that compensation is disregarded in calculating the damages for which the defendant is liable. The rule applies to payments made by such collateral sources as insurance policies, employment benefits, gratuitous payments, social security, welfare, pensions, and disability retirements. Moulton, supra, at 509.

The Moulton case, also written by Justice Lampron, gives the following description of the arguments in favor of and against the collateral source rule.

> The basic argument advanced for its application is that a tort-feasor should not be allowed to escape the consequences of his wrongful act merely because his victim has received a benefit from a collateral source which would constitute a windfall to the defendant wrongdoer. It also pointed out that in many instances the plaintiff has paid for these benefits in the form of insurance premiums or concessions in the wages he received because of such fringe benefits. If such considerations are not present and the payments are gratuitous, it is maintained that the maker of these payments did not intend to relieve the tort-feasor of any liability, but rather to aid the plaintiff by doing him a favor. It is also argued that the collateral source rule is designed to offset the inability of ordinary damages to adequately compensate an injured accident victim.
>
> The main argument against the application of the collateral source rule is that the main purpose of damages is to compensate the injured party. Hence the defendant should not be made to pay more than the amount needed to make the plaintiff whole. To do otherwise violates the compensatory nature of damages by placing the plaintiff in a better position financially than before the accident. An examination of the cases in which the rule has been applied will reveal that for the most part they involved personal injuries. Furthermore in some of those cases the collateral payor was subrogated, up to the amount paid, to plaintiff's claim against the defendant. Thus the plaintiff did not receive more than was necessary to make him whole nor was the defendant obliged to pay more than that amount. This right of subrogation arises by contract, common law or equitable principles, and by statute. (Citations omitted).

114 N.H. at 509-510

4. Rylands v. Fletcher, L.R. 3 H.L. 330 (1868).

The leading case in the development of the doctrine of strict liability for abnormally dangerous conditions and activities is Rylands v. Fletcher, L.R. 3 H.L. 330 (1868). In that case water from the defendants' reservoir, constructed on land above an abandoned coal mine shaft, escaped from the reservoir and, travelling through connecting passages, flooded an adjoining mine owned by the plaintiffs. The English court (House of Lords) held that the "Non-natural" use to which the defendant put his land rendered the defendant "prima facie answerable for all the damage which is the natural

consequence" of that use. The defendant's liability is said to be "strict" because he is liable for the consequences of the escape from his land without regard to fault; in other words, it does not matter that the defendant exercised all due care to prevent the escape.

The doctrine was almost immediately accepted by courts in Massachusetts and Minnesota, and rejected in New Hampshire (Brown v. Collins, 53 N.H. 442 (1873), New York, and New Jersey. Prosser, Law of Torts, 508 (4th Ed. 1971). As of 1971 Professor Prosser counted 30 American jurisdictions which embraced the doctrine and 7, including New Hampshire, which did not. Id., at 509.

In 1972, Justice Lampron declined to apply the doctrine in a case where the plaintiffs were injured by water escaping from the defendant's burst dam. Moulton v. Groveton Paper Co., 112 N.H. 50, 54 (1972) (the predecessor case to Moulton discussed above). Justice Lampron quoted the following language from King v. Association, 100 N.H. 212, 216 (1956), "[a]n examination of the cases in this state definitely indicate [sic] a clear tendency to limit strict liability and the legislature has not seen fit to change it." The notion that the supreme court is reluctant to extend the doctrine of strict liability was recently reiterated in Siciliano v. Capital City Shows, Inc., 124 N.H. 719, 730 (1984).

5. Waiver of Municipal Liability.

The State and all of its political subdivisions are authorized by RSA 412:3 to procure liability insurance. That same section provides that the defense of governmental immunity is not available where such liability insurance is obtained. The defense is still available, however, for excess awards in the event that the government's liability exceeds the limit of coverage under the policy or the limit on municipal immunity in RSA 507-B:4 ($100,000), whichever is higher. RSA 412:3 requires a court to abate any verdict against a government to the extent it exceeds those limits.

REPORT OF THE JUDICIAL COUNCIL
ON HOUSE BILLS 283, 338, 329, 168, 7 AND SENATE BILL 78,
AS AMENDED, MARCH 6, 1986 RELATIVE TO TORT REFORM

Change In The Rule On Consortium

House Bill 283, RSA 507:8-a, which became effective August 21, 1967, provides as follows:

> "Loss of Consortium. In a proper action, either a wife or husband is entitled to recover damages for loss or impairment of right of consortium whether caused intentionally or by negligent interference."

In LaBonte v. National Gypsum Co., 110 N.H. 314 (1970) the wife of an injured workman sued her husband's employer for loss of consortium resulting from an injury to her husband, which arose out of and in the course of his employment. The employer sought to dismiss the wife's claim, because her "cause of action is dependent upon her husband's cause of action and if that action is barred, so is the plaintiff's." The husband's claim against the employer was dismissed because it was barred under RSA 281:12, the provisions of New Hampshire Workers' Compensation Law. The Court ruled that the right of action for loss or impairment of consortium granted to the wife (as well as to the husband) is a separate and distinct right from that of her husband, to recover for her separate and distinct loss of consortium which results to her from the negligent injury to her husband. LaBonte v. National Gypsum Co., at 319. The Court ruled that the defense that was a complete bar to the husband's action did not bar the wife's independent claim and reinstated her action.

The Court defined consortium as follows: "'Consortium', as a general description, represents reciprocal rights inherent in the marital relationship of husband and wife, including such undefined elements as comfort, companionship, and commitment to the needs of each other." It "embraces love, companionship, affection, society, sexual relations, services, solace." LaBonte v. National Gypsum So., at 318.

The Court's interpretation of RSA 507:8-a was consistent with the Court's previous ruling in Broomfield v. Seybolt Motors, 109N.H. 501, 502 (1969), that "The statute did not give the wife merely a new remedy to an existing right but gave her a new cause of action previously denied."

The interpretation of this statute came up again in Archie v. Hampton, 112 N.H. 13, (1972) in which the defendant sought to bar a wife's claim for loss of consortium after she had received death benefits under her workers' compensation, or if such action were permitted, to obtain a credit for those payment. Consistent with its rulings in Broomfield and LaBonte, the Court rejected the defendant's arguments and found that the wife had a "separate and distinct right to compensation which she sustained by the death of her husband who was a support to her," under RSA 281:22 (supp.), that RSA 281 provided no waiver by her of her common-law right, and that therefore, the wife "not being

an employee under RSA ch. 281, is not barred by her receipt of benefits thereunder from maintaining an action under RSA 507:8-a for loss of consortium if her husband's death was caused by the negligence of his employer." Archie v. Hampton at 16. The Court went on to say at p. 17 "it is well settled that at common law where the husband alone had a right of action for loss of consortium his damages for injury to his wife which resulted in her death stopped at the time of her decease... We find nothing in the legislative history or the terms of RSA 507:8-a which would lead to the conclusion that the legislature intended the right granted to the wife to be different from that formerly held by the husband alone. On the contrary, we are led to conclude that the legislature did intend that they be the same as evidenced by the title of Senate Bill 136 (1967) and of laws 1967 ch. 218 (now RSA 507:8-a), which read: 'An Act Relative To A Wife's Right To Recover For Loss Of Consortium To The Same Extent That A Husband May Do So.'"

The Court followed exactly the same reasoning in Reid v. Spadone Machine Co., 119 N.H. 198 (1979), where the Court said at p. 199 "A wife's cause of action for loss of consortium is created by statute as a separate and distinct claim and is not derivative from the claim of the husband. RSA 507:8-a. The plaintiff is a separate and distinct party from her husband and she was not a party to his action. Therefore, neither res judicata nor collateral estoppel against her result from that judgment." This ruling came in a case where the wife brought an action after the husband had brought one and lost, and the defendant sought to dismiss the wife's claim as being barred by the ruling in the husband's claim. The Court continued its consistent interpretation of RSA 507:8-a in Kingsbury v. Smith, 122 N.H. 237 (1982) in a medical malpractice case, where it interpreted the statute to permit a husband to bring a separate action for loss of consortium when the wife was the primary plaintiff, and her action was brought in negligence.

A careful reading of Brann v. Exeter Clinic, Inc. 127 N.H. 155 (1985) shows that it follows the rulings that the Court has consistently made since 1970.

Frivolous Suits

House Bill 338 and House Bill 329 (507-E:6)

New Hampshire Superior Court Rule 59 permits the Court to "assess reasonable costs, including reasonable counsel fees, against any party whose frivolous or unreasonable conduct makes necessary the filing of or hearing on any motion."

Rule 3.1 of the Rules of Professional Conduct, adopted by the New Hampshire Supreme Court on January 16, 1986, and effective February 1, 1986, follows:

> Rule 3.1 Meritorious Claims and Contentions
>
> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a

basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

ABA Model Code Comments

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Committee Notes to Decisions

Bryant's Case, 24 N.H. 149 (1851). Where an attorney misrepresented to the court and opposing counsel that he had his client's authority to appear, the attorney was not disciplined as the court found only lack of competence. See Committee Notes, Rule 1.1

Kevlick v. Goldstein, 724 F.2d 844 (1st Cir. 1984). Quoting the Court, "We are aware that disqualification motions can be tactical in nature, designed to harass opposing counsel, and have, therefore, kept in mind that the purpose of the Rules (the then existing N.H.C.P.R.) can be subverted when they are invoked by opposing parties as procedural weapons." at 848.

When a lawyer takes part in instituting a frivolous lawsuit, that lawyer is not only jeopardizing the reputation of the legal profession and the judicial system, but is placing him or herself in jeopardy as well. By instituting such a suit, the lawyer may be subject to disciplinary action, imposition of costs, and, in some cases, damages. ABA Model Rule 3.1

proscribes a lawyer from asserting a claim "unless there is a basis for doing so that is not frivolous." The former ABA Model Code similarly prohibited a lawyer from taking any legal action "when [the lawyer] knows or when it is obvious that such action would serve merely to harass or maliciously injure another." ABA Model Code DR 7-102(A)(1).

"A review of recent decisions leaves no doubt that the filing of frivolous . . . litigation is viewed as . . . reprehensible conduct justifying disbarment." Ellis v. Roshei, 143 Cal. App. 3d 642, 192 Cal. Rptr. 57 (1983) (lawyer disciplined for filings which were "technically correct procedures" but which were not employed in good faith, were frivolous and caused unnecessary delay); see also In re Sarelas, 360 F. Supp. 794 (N.D. Ill. 1973); In re Jafree, 93 Ill. 2d 450, 444 N.E. 2d 143 (1982) (lawyer disbarred for instituting numerous frivolous and defamatory law suits with the purpose of harassing defendants). Similarly, lawyers have been suspended from practice for filing frivolous lawsuits and appeals. People v. Kane, 655 P. 2d 390 (Colo. 1983) (three year suspension imposed for filing frivolous appeals which interfered with the administration of justice); In re Paauwe, 294 Or. 171, 654 P. 2d 1117 (1982) (30 day suspension for filing meritless appeal). Another sanction available to the court is to reprimand a lawyer for filing an unwarranted or frivolous claim. In re Lauer, 108 Wis. 2d 746, 324 N.W. 2d 432 (1982) (lawyer reprimanded for knowingly advancing a claim unwarranted under existing law and unsupportable by good-faith argument).

As to the interposition of baseless defenses, see Overmyer v. Fidelity & Deposit Co., 554 F 2d 539, 543 n.4 (2d Cir. 1977); In re Bithoney, 486 F. 2d 319 (1st Cir. 1973); Panagopoulos v. Immigration & Naturalization Service, 434 F. 2d 602 (1st Cir. 1970).

It is difficult to find a workable standard in this area because methods designed to bar wasteful litigation from the courts tend to dampen the incentive to bring potentially worthwhile claims. The ABA Model Rules attempt to minimize this inhibiting effect by avoiding a formalistic test for worthwhile claims. Instead, Model Rule 3:1 treats frivolousness as akin to colorlessness which has been measured in terms of the reasonable beliefs of the individual making the claim. See Nemeroff v. Abelson, 620 F. 2d 339 (2d Cir. 1980).

> A claim is colorable, for the purposes of the bad faith exception [to the rule that each party bears its own fees and expenses], when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. The question is whether a reasonable attorney could have concluded that the facts supporting the claim might be established . . . .

Id. at 348. Thus, "the question . . . is not a matter of what a hypothetical reasonable practitioner would have done in the same circumstances, but of whether the lawyer's conduct was beyond the limits of reason or the bounds of law . . . ." Friedman v. Dozorc, 412 Mich. 1, 5, 312 N.W. 2d 585, 606 (1981); see also Restatement (Second) of Torts Subsection 675 (1977).

Some courts, however, have applied a reasonable lawyer standard in determining whether a claim was impermissibly frivolous. See Chest Hill Co.

v. Guttman, 1981-2 Trade Cas. (CCH) 64-417 (S.D. Ohio May 29, 1981); First National Bank v. Marquette National Bank, 482 F. Supp. 514, 523 (D. Minn. 1979): Bird v. Rothman, 627 P. 2d 1097 (Ariz. App. 1981); Sommer v. Carr, 99 Wis. 2d 789, 299 N.W. 2d 856 (1981); State v. State Farm Fire & Casualty Co., 100 Wis. 2d 582, 302 N.W. 2d 827 (1981). Other courts have determined a claim to be impermissibly frivolous if it is found beyond doubt and under any arguable legal or factual construction that the substance of the claim would not entitle the claimant to relief, Boyce v. Alizaduh, 595 F. 2d 948 (4th Cir. 1979) (standard to be applied to in forma pauperis complaints under 28 U.S.C. Subsection 1915(d)); Pyles v. Carlson, 532 F. Supp. 42, 45 (W.D. Tenn. 1982) (same), or if a claim cannot be supported by a "rational argument" on the law or the facts, Henriksen v. Bentley, 644 F. 2d 852 (10th Cir. 1981) (standard to be applied to in forma pauperis complaints under 28 U.S.C. Subsection 1915(d)); Dolence v. Flynn, 628 F. 2d 1280 (10th Cir. 1980); Davis v. Oklahoma Department of Corrections, 516 F. Supp. 5 (W.D. Okla. 1980), or if claimant's "realistic chances" for success are "slight," Jones v. Bales, 58 F.R.D. 451, 463 (N.D. Ga. 1972), aff'd, 480 F. 2d 805 (5th Cir. 1973); Harvey v. Clay County Sheriff's Department, 473 F. Supp. 741 (W.D. Mo. 1979); or if there "exists substantiality [as to the claim] which is of justiciable basis and of impressing reality," Serna v. O'Donnell, 70 F.R.D. 618, 621 (W.D. Mo. 1976) (quoting Carey v. Settle, 351 F. 2d 483, 484-85 (8th Cir. 1965)).

The frivolousness issue is often transformed into a discussion of the existence, scope, and limits of the lawyer's duty to investigate the client's grounds for suit in order to verify them. Courts differ on this point, some holding that such a duty exists, Nelson v. Miller, 227 Kan 271, 282-85, 607 P. 2d 438, 447-49 (1980), and some holding that "whether an attorney acted without probable cause . . . should not normally depend on the extent of the investigation conducted [by him]," Friedman v. Dozorc, 412 Mich. 1, 5, 312 N.W. 2d 585, 605-6 (1981). See also Restatement (Second) of Torts Subsections 674, 675 commend (1977). See generally Comment, A Lawyer's Duty to Reject Groundless Litigation, 21 Wayne L. Rev. 1561 (1980).

Upon a finding by the court that a lawyer has filed a frivolous or meritless claim, the party against whom the claim was filed may bring an action to recover costs, including lawyer's fees, and damages that were incurred as a result of the wrongful filings. Such awards are authorized under statutes, both state, e.g., Or. Rev. Stat. Subsection 9.460 (1981); Wis. Stat. Subsection 814.025 (1982); Cal. Civ. Proc. Code Subsection 128.5 (West 1982), and federal, 28 U.S.C. Subsection 1927; Fed. R. App. P. 38. Numerous courts have awarded costs or damages, or both, incurred as a result of defending against frivolous suits. E.G., In re Hartford Textile Corp., 659 F. 2d 299 (2d Cir. 1981) (double the costs and $5,000 damages awarded for frivolous appeals); Bank of Canton v. Republic National Bank, 636 F. 2d 30 (2d Cir. 1980) (appellee awarded double costs and damages or expenses other than costs of the appeal, including counsel fees, whichever sum is less); Knorr Brake Corp. v. Harbil, 556 F. Supp. 484 (N.D. Ill. 1983) (costs awarded against opposing counsel for filing groundless joinder motion); Pfister v. Delta Air Lines, 496 F. Supp. 932 (N.D. Ga. 1980) (lawyer required to pay opponent's reasonable lawyer's fees when lawyer initiated frivolous litigation); Addison v. Brown, 413 So. 2d 1240 (Fla. Dist. Ct. App. 1982) (lawyer ordered to pay assistant attorney general's fees and the state's costs for witnesses and the jury when lawyer filed petition lacking legal or factual merit); Peerman v. Sidicane, 605 S.W. 2d 242 (Tenn. 1980) (compensatory and

punitive damages upheld for malicious prosecution and abuse of process in groundless appeal); Sommer v. Carr, 99 Wis. 2d 789, 299 N.W. 2d 856 (1981) (court remanded to trial court issue of whether third party complaint, which was frivolous, entitled third party defendant to costs and reasonable lawyer's fees): see also McCandles v. Great Atlantic & Pacific Tea Co., 697 F. 2d 198 (7th Cir. 1983); Asberry v. United States Postal Service, 692 F. 2d 1378 (Fed. Cir. 1982); Ellis v. Roshei, 143 Cal. Appl 3d 642, 192 Cal. Rptr. 57 (1983); In re Lauer, 108 Wis. 2d 746, 324 N.W. 2d 432 (1982). See generally Comment, Sanctions Imposed by Courts on Attorneys Who Abuse The Judicial Process, 44 U. Chi. L. Rev. 619 (1976-77); Annot., 31 A.L.R. Fed. 833 (1977); Annot., 97 A.L.R. 3d 688 (1980).

It is within the province of a lawyer's professional judgment to refuse to accept a case when the client elects to pursue a course of conduct that the lawyer perceives to be fruitless or frivolous. Evans v. Commonwealth Department of Public Welfare, 68 Pa. Commw. 34, 447 A. 2d 1119 (1982); see also Withdrawal of Appointed Counsel from Frivolous Indigent Appeals, 49 Ind. L.J. 740 (1973-74); Frivolous Lawsuits -- The Lawyer's Duty to Say "No," 52 U. Colo. L. Rev. 367 (1980-81).

An exception to the proscription against filing a frivolous claim exists for a lawyer representing a criminal defendant or a respondent in a proceeding that could result in incarceration. See ABA Model Rule 3.1. This exception reflects the constitutional principle that the state must prove every element of the crime charged and may not, by procedural rule or otherwise, shift its burden to the defendant. E.G., Mullaney v. Wilbur, 421 U.S. 684 (1975); Tehan v. United States, 382 U.S. 406 (1966). However, this exception does not extend to the point of permitting dilatory tactics, such as the interposition of baseless objections.

> There is . . . a prevailing misconception concerning the role of defense counsel in a criminal case, namely, that he is not effective if he fails to interpose frequent objections to evidence, even though [they] have no basis in law. Not only do such tactics . . . work to the disadvantage of the client, but they also lower the standards of the profession and bring disrepute upon the court . . . . [P]artisan advocacy is a form of public service . . . ; it ceases to be when it hinders [the] process [of adjudication], when it misleads, distorts[,] obfuscates . . . .

State v. Darnell, 14 Wash. App. 432, 437, 542 P. 2d 117, 120 (1975) (quoting Professional Responsibility: Report of the Joint Conference, 44 A.B.A. J. 1159, 1162 (1958).

Testimonial Privilege In Medical Injury Cases
House Bill 329 Amending RSA 507-E:3

This section of House Bill 329 provides a civil testimonial privilege for medical care providers that does not appear elsewhere in our Civil Law, unless

in connection with a specific privilege such as attorney/client, priest/penitent or the like. In medical injury cases expert opinion is required unless the matter is of such common knowledge that any layman would be known to understand it. Bently v. Adams, 100 N.H. 377 (1957).

The testimonial privilege proposed in this bill extends beyond the medical care provider's opinion about whether or not he was negligent. It would prevent plaintiff from asking questions prior to trial of a defendant concerning any issue upon which expert testimony would be required. This would include the medical care provider's opinion of what a reasonable standard of care is, or was at the time of injury, his opinion of what adequate training and experience for the procedure involved might have been, which things that he did were ministerial and which were judgmental, the reasons that he has for the actions that he took during the course of the event, whether in his opinion the patient understood or was capable of understanding the issue of informed consent, his opinion about the patient's condition at or near the time that the issue of informed consent was discussed, the effect on the plaintiff of any medications that he might have been taking at or near the time that he signed an informed consent provision, his opinion about the patient's condition and whether or not it required the procedures that the medical care provider ultimately followed, and whether or not the activity of the defendant medical care provider met the standards that were applicable to him at the time of the event.

Extensive discovery provisions are set forth in New Hampshire Superior Court Rules to permit each side to fully develop the evidence so that trial will be upon known facts, and that if settlement is warranted, it will be produced by the development of the evidence. House Bill 329 would permit the medical care provider to give expert opinion in his own defense at trial, but it would prevent the plaintiff from questioning him about his opinions until he does so.

Expert Qualification Rule - House Bill 329, 507-E:3

The Rule for an expert to render an opinion in the trial of any issue in New Hampshire is fairly stated as follows: If by virtue of training or experience, or the acquisition of special knowledge, a person is deemed by the trial judge to have more expertise than the jury on the issues presented, such that the opinion of such person may aid the jury in understanding the evidence and reaching a just conclusion, the Court may permit such person to give an opinion. Brown v. Cathay Island, Inc., 125 N.H. 112 (1984); Peters v. McNally, 123 N.H. 438, 440, 462 (1983); Rau v. Stores, 97 N.H. 490 (1952); Christie v. Company, 89 N.H. 236, 239 (1935); Pacquette v. Company, 79 N.H. 288, 290 (1919). In many cases, experts are necessary to prove elements of a case. This is particularly true in medical injury cases. Folger v. Corbett, 118 N.H. 737 (1978); Carrigan v. Sacred Heart Hospital, 104 N.H. 73 (1962); Beane v. Perley, 99 N.H. 390 (1954).

Whether the particular expert presented has the requisite training and experience such that the jury, after hearing the opinion, should rely on it goes to the weight of the opinion presented, and not to whether or not the

jury can hear it. Bill v. New England Cities Ice Co., 90 N.H. 453 (1940).

The proposal in House Bill 329 creates a special and limited expert rule in medical injury cases and may create a constitutional problem. Carson v. Maurer, 120 N.H. 925 (1980).

The proposed rule potentially would require an evidentiary proceeding before a presiding trial judge to determine the qualifications of a medical injury expert, not just with respect to his training and experience, but whether or not he was qualified to render or supervise equivalent care to that which is alleged to have caused the medical injury at the time of trial. This would probably require expert testimony and an examination of the requirements necessary to provide the care in question.

The recently adopted New Hampshire Rules of Evidence, specifically Rule 702 (modeled after the Federal Rules of Evidence), provides that "if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact at issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rules of Evidence were adopted by the New Hampshire Supreme Court on January 18, 1985, and became effective July 1, 1985. They were the product of a committee of the New Hampshire Bar Association which began its work on these rules in March, 1982.

Collateral Source Rule Change - House Bill 168, House Bill 329 amending RSA 508:16, RSA 508:4-d

The collateral source provision appears to affect workers' compensation liens set forth in RSA 281:14, state, county and municipal welfare claims, town liability reimbursement for juvenile placement, VA benefits, Medicare or Medicaid benefits, union health and welfare benefits, group insurance disability, and employer-sponsored wage continuation plans. Since the bills would permit the defendant to introduce evidence of the amount recovered or recoverable by the injured person from these other programs, a new area of discovery is opened in preparing for trial. By interrogatory or deposition a defendant will now ask a plaintiff to list all such collateral sources, and all benefits received or potentially to be received. Careful counsel will seek to obtain copies of the plans, payout records, deductible limitations, and major medical and hospital resubmission opportunities. There will be a significant increase in activity with respect to each of these plans, and it is not unlikely that discovery measures will be directed to organizations such as Blue Cross/Blue Shield, the Veterans' Administration, or others. The plaintiffs may counter such evidence by introducing the total amounts which the plaintiff has paid or contributed to secure these benefits. How this is done in a union-negotiated benefit that is to be paid for by an employer, and whether such is included within the terms of the bill, is not clear, but by necessity the person who is going to receive those benefits will have to undertake discovery with those supplemental sources of protection to be able to introduce the offset provided by in House Bill 329, for example.

Since by legislation, federal regulation, or private contract many of these collateral sources have either subrogation rights, liens, or rights to reimbursement, there will be an economic impact on those providers. If, as amendments to Senate Bill 78 suggest, exemptions from this change in collateral source are granted to those providers who have rights of subrogation, then it may be necessary in the course of the underlying case for those providers to obtain counsel and present their rights of reimbursement or subrogation to the Court to keep that material from being presented to the jury.

Itemized Verdicts, Caps On Non-Economic Loss And Periodic Payments

House Bills 7 and 329 amending RSA 507:8-f and 508:4-d

Awards by general verdict in personal injury cases are not subject to federal income taxation. Internal Revenue Code Subsection 104.

Under the proposed sections of House Bills 7 and 329 requiring itemization of verdicts between economic and non-economic loss, and periodic payments of future economic damage, the recipient of funds in a personal injury action specifically designated as lost wages will probably have those sums included in their gross income in the year of receipt under Internal Revenue Code Subsection 71. Under the periodic payment provision in the event that periodic payment of future economic loss is ordered, the Internal Revenue Service may well impute an interest rate for the delayed payment, causing taxation of imputed interest in calendar years in which the monies are not actually received. Internal Revenue Code Subsection 7872.

When the legislature passed the comparative negligence act in 1969 it specifically provided for general rather than special verdicts. RSA 507:7-a. The Provision for separate and itemized verdicts exposes the deliberations of the jury to more scrutiny. The result may be more appeals based on allegations of events within the jury deliberation room.

The proposal in House Bill 329 for periodic payments would require additional Court hearings and would result in higher costs. Under current New Hampshire law a plaintiff may not investigate the assets of a defendant until after a judgment when looking to secure payment. Sawyer v. Bouffard, 113 N.H. 627 (1973). The ability of the defendant to pay in the event of a judgment for future damages in excess of $50,000 would become an issue and would require discovery of assets and the development of evidence with respect to future ability to pay and security. This discovery would require additional attorney time and expense and the issues of periodic payment would have to be determined by the Court after additional hearing. For a plaintiff in the Court to determine whether an insurance company is solvent or near insolvency, and whether such periodic payments would be governed by State guaranty funds or not, are issues left open by the bill. While the bill permits the Court to require a judgment debtor to post security, the terms of such security - who holds it and what fiduciary responsibility the holder of such security may have - are not set forth. While structured settlements are often used by negotiation today, plaintiffs generally require A or A+- rated insurers

writing structured annuities, and no such provisions are set forth in House Bill 329

There is also a provision for the Court to act in the death of the injured person, which permits the Court to order the unpaid balance remaining to be paid to the decedent's estate. This might interfere with the decedent's estate planning, since the statute appears to use mandatory language and suggests by inference that the injured party does not have the power to alienate the future payments due him by will or intervivos trust.

Doctrine of Charitable Immunity

An amendment to Senate Bill 78 and a proposal to the House Judiciary Committee by the New Hampshire Hospital Association would provide for a $25,000 liability cap exposure for members of boards of directors or trustees of nonprofit hospital groups and other charitable institutions if sued for any act or omission occurring within the charitable scope of the organization.

New Hampshire has not recognized charitable immunity, either for the acts of the institution or of its employees. Hewett v. Woman's Hospital Aid Ass'n., 73 N.H. 556 (1906); Welch v. Frisbie Memorial Hospital, 90 N.H. 337 (1939). In the Welch case, the Court ruled that although it had the power to determine charitable immunity, it would not do so under the circumstances and felt that it was a matter primarily for legislative action because there was no definite, persistent and united state of the public mind about the issue. Welch v. Frisbie Memorial Hospital, supra at p. 340-41. This doctrine has been followed in modern cases. Dowd v. Portsmouth Hospital, 105 N.H. 53 (1963).

REPORT OF THE JUDICIAL COUNCIL ON HOUSE BILL 156
CONCERNING THE STATUTE OF USES
March 6, 1986

House Bill 156 is designed to repeal the statute of uses as it affects trusts within the State of New Hampshire. The statute of uses is applicable to New Hampshire trusts through New Hampshire common law as interpreted by the New Hampshire Supreme Court. See, e.g., Hutchins v. Haywood, 50 N.H. 491 (1871); Wilcox v. Wheeler, 47 N.H. 488 (1867).

The genesis of the statute of uses was a 16th century English law the purpose of which was to insure that land owners in England could not evade taxes upon real estate by transferring such property to nominee trustees. It is not a "statute" in New Hampshire but rather an English common law rule that our State Supreme Court ruled to be a part of New Hampshire common law. The effect of the "statute" is to execute any such nominee or dry trust -- that is, to transfer legal title to the beneficiary.

In the area of conveyances of real estate under trusts -- the area addressed by House Bill 156 -- the statute of uses serves only to create problems and confusion and accomplishes no public benefit. As it has been applied in New Hampshire, it runs contrary to the purpose of certain otherwise valid trusts. In addition, it can create virtually unsolvable title problems.

When people create trusts -- thereby assigning to a trustee the duty to hold or use their property for the benefit of another -- they may establish conditions regarding the use and management and disposition of the property. In New Hampshire, if a person creates a dry or passive trust -- that is, one in which the trustee is a mere title holder -- the statute of uses executes the trust and legal title passes automatically to the beneficiary without any indication on record. The passage of title without recordation is contrary to the purpose of RSA 477:7:

> 477:7 **Validity.** No deed of bargain and sale, mortgage nor other conveyance of real estate, nor any lease for more than 7 years from the making thereof, shall be valid to hold the same against any person but the grantor and his heirs only, unless such deed or lease be attested, acknowledged and recorded, according to the provisions of this chapter.

Because of the ambiguity created by the statute of uses, problems have been created over the years as to the validity of transfers of real estate. A title search may reveal that a real estate sale was executed by a trustee, and if there is no record of the written consent of the beneficiary, the title to the real estate is in doubt. The older the transaction, the bigger and more expensive the problem.

The statute of uses can thus create uncertainty and expense for persons not party to a trust who want to buy property that was in trust at some time in the past, and it runs contrary to the purpose of dry or nominee trusts. In abolishing this obstacle by adopting House Bill 156, the Legislature would not deprive beneficiaries of any existing protection. A beneficiary's legal rights to enforce the conditions of a trust would be unimpaired.

Legislation Recommended by Judicial Council and Adopted into Law

1985

Senate Bill 2	relative to child victims and child abuse: Chapter 228*
Senate Concurrent Resolution 6	relative to supreme court rules and child abuse victims.*
House Bill 276	relative to durable powers of attorney: Chapter 214**
House Bill 75	relative to appeals by the State in criminal cases.

1986

House Bill 154	relative to intestate descent and distribution among collateral heirs: Chapter 43**
House Bill 513	relative to comparative fault, apportionment of damages, and contribution among tortfeasors (formerly House Bill 47 and Section 1 of Senate Bill 78 as amended by the Senate): Chapter 227:2*
House Bill 156	providing that the statute of uses shall not affect trusts: Chapter 10**
House Bill 36	(new title) relative to minors not under guardianship: Chapter 28***
House Bill 58	relative to strict liability for hazardous waste cleanup and priority of State liens on certain property: Chapter 119

---

* Judicial Council assisted in the drafting.

** Judicial Council initiated and drafted the legislation.

*** Judicial Council recommended the adopted amendments.

JUDICIAL STATISTICS

SUPREME COURT CASELOAD STATISTICS

	Year End 1985		Year End 1986	
Pending Cases, 12/31/--	361		337	
Cases Filed	574		534	
Cases Reinstated	4		10	
Total Cases		939		881
Cases Summarily Affirmed	147		120	
Cases Withdrawn	49		52	
Cases Declined	67		102	
Dismissed; remanded, etc.	76		141	
Subtotal	339		415	
By Opinion:	239		199	
Others by Consolidated Opinion	24		10	
Total Opinions	263		209	
Total Disposed		602		624
Pending				
Argued, awaiting opinion	87		38	
Docketed, but not argued	250		218	
TOTAL PENDING YEAR END		337		257

SUPERIOR COURT CASELOAD SUMMARIES
JANUARY 1, 1985 TO DECEMBER 31, 1985

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	312	224	446	207	453	2,586	857	1,240	912	166	7,403
Civil Entries	400	217	222	98	222	2,693	708	1,403	678	187	6,828
Equity Entries	268	163	183	82	199	812	587	858	214	104	3,470
Domestic Relations Entries	394	248	535	190	511	2,189	871	1,702	715	347	7,702
TOTAL	1,374	852	1,386	577	1,385	8,280	3,023	5,203	2,519	804	25,403
Criminal Dispositions	254	499	361	180	373	1,913	816	1,246	789	159	6,590
Civil Dispositions	518	196	285	100	236	1,806	701	1,281	522	115	5,760
Equity Dispositions	194	94	200	92	199	443	514	751	180	98	2,765
Domestic Relations Dispositions	392	259	974	160	498	3,134	1,179	1,535	562	411	9,104
TOTAL	1,358	1,048	1,820	532	1,306	7,296	3,210	4,813	2,053	783	24,219

OTHER INFORMATION*
JANUARY 1, 1985 TO DECEMBER 31, 1985

Misdemeanor Appeals Entered	77	97	117	68	137	767	311	555	377	21	2,527
Violations Appeals Entered	9	29	60	24	20	82	36	61	97	9	427
Felonies Entered	215	252	231	140	296	1,677	445	516	286	133	4,191
TOTAL	301	378	408	232	453	2,526	792	1,132	760	163	7,145
Misdemeanor Appeals Disposed of	60	147	100	51	160	543	326	535	371	16	2,309
Violations Appeals Disposed of	8	39	49	29	18	78	45	118	105	4	493
Felonies Disposed of	186	313	213	100	194	1,162	412	592	313	130	3,615
TOTAL	254	499	362	180	372	1,783	783	1,245	789	150	6,417

* Please see page 4 for an explanation of this breakdown.

SUPERIOR COURT CASELOAD SUMMARIES
JANUARY 1, 1985 TO JUNE 30, 1985

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	181	115	187	102	276	1,251	400	589	457	70	3,628
Civil Entries	209	110	114	50	122	1,234	381	705	347	110	3,382
Equity Entries	142	65	79	50	107	364	174	375	80	54	1,490
Domestic Relations Entries	203	127	256	92	275	1,066	456	887	372	184	3,918
TOTAL	735	417	636	294	780	3,915	1,411	2,556	1,256	418	12,418
Criminal Dispositions	147	239	166	109	229	986	432	736	360	43	3,447
Civil Dispositions	276	107	148	34	129	831	353	623	287	46	2,834
Equity Dispositions	87	42	105	51	100	208	249	392	90	47	1,371
Domestic Relations Dispositions	166	122	429	82	235	1,316	690	699	257	132	4,128
TOTAL	676	510	848	276	693	3,341	1,724	2,450	994	268	11,780

OTHER INFORMATION*
JANUARY 1, 1985 TO JUNE 30, 1985

Misdemeanor Appeals Entered	50	42	42	27	82	394	149	303	189	11	1,289
Violations Appeals Entered	4	15	33	19	9	45	19	26	44	7	281
Felonies Entered	127	114	94	59	186	772	187	242	179	88	2,048
TOTAL	181	171	169	105	277	1,211	355	571	412	106	3,558
Misdemeanor Appeals Disposed of	38	20	33	20	104	254	171	311	162	7	1,120
Violations Appeals Disposed of	4	15	28	21	13	38	31	79	53	2	284
Felonies Disposed of	105	204	106	68	112	635	214	346	145	34	1,969
TOTAL	147	239	167	109	229	927	416	736	360	43	3,373

* Please see page 4 for an explanation of this breakdown.

SUPERIOR COURT CASELOAD SUMMARIES
JULY 1, 1985 TO DECEMBER 31, 1985

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	131	109	259	105	177	1,335	457	651	455	96	3,775
Civil Entries	191	107	108	48	100	1,459	327	698	331	77	3,446
Equity Entries	126	98	104	32	92	448	413	483	134	50	1,980
Domestic Relations Entries	191	121	279	98	236	1,123	415	815	343	163	3,784
TOTAL	639	435	750	283	605	4,365	1,612	2,647	1,263	386	12,985
Criminal Dispositions	107	260	195	71	144	927	384	510	429	116	3,143
Civil Dispositions	242	89	137	66	107	975	348	658	235	69	2,926
Equity Dispositions	107	52	95	41	99	235	265	359	90	51	1,394
Domestic Relations Dispositions	226	137	545	78	263	1,818	489	836	305	279	4,976
TOTAL	682	538	972	256	613	3,955	1,486	2,363	1,059	515	12,439

OTHER INFORMATION*
JULY 1, 1985 TO DECEMBER 31, 1985

Misdemeanor Appeals Entered	27	55	75	41	55	373	162	252	188	10	1,238
Violations Appeals Entered	5	14	27	5	11	37	17	35	53	2	206
Felonies Entered	88	138	137	81	110	905	258	274	107	45	2,143
TOTAL	120	207	239	127	176	1,315	437	561	348	57	3,587
Misdemeanor Appeals Disposed of	22	127	67	31	56	289	155	224	209	9	1,189
Violations Appeals Disposed of	4	24	21	8	5	40	14	39	52	2	209
Felonies Disposed of	81	109	107	32	82	527	198	246	168	96	1,646
TOTAL	107	260	195	71	143	856	367	509	429	107	3,044

* Please see page 4 for an explanation of this breakdown.

SUPERIOR COURT CASELOAD SUMMARIES
JANUARY 1 TO DECEMBER 31, 1986

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	366	348	623	188	431	2,680	901	1,632	915	165	8,249
Civil Entries	513	239	197	93	255	2,761	793	1,536	619	154	7,160
Equity Entries	244	174	117	48	185	1,010	464	722	264	72	3,300
Domestic Relations Entries	352	248	559	210	446	2,110	847	1,856	808	312	7,748
TOTAL	1,475	1,009	1,496	539	1,317	8,561	3,005	5,746	2,606	703	26,457
Criminal Dispositions	263	322	528	211	365	2,738	865	1,457	739	112	7,600
Civil Dispositions	420	193	255	125	184	1,920	796	1,238	639	129	5,899
Equity Dispositions	216	132	133	73	133	528	674	674	233	84	2,880
Domestic Relations Dispositions	648	216	986	199	453	2,519	1,354	2,016	773	303	9,467
TOTAL	1,547	863	1,902	608	1,135	7,705	3,689	5,385	2,384	628	25,846

OTHER INFORMATION*
JANUARY 1 TO DECEMBER 31, 1986

Misdemeanor Appeals Entered	68	229	91	67	91	765	321	466	339	33	2,470
Violations Appeals Entered	10	35	26	14	10	76	35	52	95	2	355
Felonies Entered	272	203	378	99	308	1,786	466	817	402	126	4,857
TOTAL	350	467	495	180	409	2,627	822	1,335	836	161	7,682
Misdemeanor Appeals Disposed of	67	145	100	81	100	745	351	542	360	18	2,509
Violations Appeals Disposed of	15	31	27	14	147	81	36	83	120	3	424
Felonies Disposed of	181	145	329	110	240	1,785	382	832	259	91	4,354
TOTAL	263	321	456	205	354	2,611	769	1,457	739	112	7,287

* Please see page 4 for an explanation of this breakdown.

SUPERIOR COURT CASELOAD SUMMARIES
JANUARY 1 TO JUNE 30, 1986

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	152	126	285	73	169	1,358	459	871	426	82	4,001
Civil Entries	267	99	94	47	121	1,459	386	894	318	81	3,766
Equity Entries	109	73	69	31	106	499	335	341	117	38	1,718
Domestic Relations Entries	171	125	312	92	227	1,054	437	1,005	390	155	3,968
TOTAL	699	423	760	243	623	4,370	1,617	3,111	1,251	356	13,453
Criminal Dispositions	108	188	262	99	231	1,340	407	714	333	42	3,724
Civil Dispositions	227	105	140	61	97	1,000	392	635	338	59	3,054
Equity Dispositions	102	57	76	51	69	235	455	267	139	49	1,500
Domestic Relations Dispositions	424	107	507	93	256	1,386	671	955	322	138	4,859
TOTAL	861	457	985	304	653	3,961	1,925	2,571	1,132	288	13,137

OTHER INFORMATION*
JANUARY 1, 1986 TO JUNE 30, 1986

Misdemeanor Appeals Entered	30	136	47	34	40	404	194	289	182	12	1,368
Violations Appeals Entered	6	24	14	5	2	37	14	37	46	1	186
Felonies Entered	116	124	179	36	117	885	223	522	164	65	2,431
TOTAL	152	284	240	75	159	1,326	431	848	392	78	3,985
Misdemeanor Appeals Disposed of	36	86	52	48	47	378	183	268	177	11	1,286
Violations Appeals Disposed of	9	21	14	6	10	28	14	57	47	1	207
Felonies Disposed of	63	81	156	45	162	847	190	389	109	30	2,072
TOTAL	108	188	222	99	219	1,253	387	714	333	42	3,565

* Please see page 4 for an explanation of this breakdown.

SUPERIOR COURT CASELOAD SUMMARIES
JULY 1 TO DECEMBER 31, 1986

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
Criminal Entries	214	222	338	115	262	1,322	442	761	489	83	4,248
Civil Entries	246	140	103	46	134	1,302	407	642	301	73	3,394
Equity Entries	135	101	48	17	79	511	129	381	14.	34	1,582
Domestic Relations Entries	181	123	247	118	219	1,056	410	851	418	157	3,780
TOTAL	776	586	736	296	694	4,191	1,388	2,635	1,355	347	13,004
Criminal Dispositions	155	134	266	112	134	1,398	458	743	406	70	3,876
Civil Dispositions	193	88	115	64	87	920	404	603	301	70	2,845
Equity Dispositions	114	75	57	22	64	293	219	407	94	35	1,380
Domestic Relations Dispositions	224	109	479	106	197	1,133	683	1,061	451	165	4,608
TOTAL	686	406	917	304	482	3,744	1,764	2,814	1,252	340	12,709

OTHER INFORMATION*
JULY 1 TO DECEMBER 31, 1986

Misdemeanor Appeals Entered	38	93	44	33	51	361	127	177	157	21	1,102
Violations Appeals Entered	4	11	12	9	8	39	21	15	49	1	169
Felonies Entered	156	79	199	63	191	901	243	295	238	61	2,426
TOTAL	198	183	255	105	250	1,301	391	487	444	83	3,697
Misdemeanor Appeals Disposed of	31	59	48	33	53	367	168	274	183	7	1,223
Violations Appeals Disposed of	9	7	13	9	145	53	22	26	73	2	217
Felonies Disposed of	118	64	173	65	78	938	192	443	150	61	2,282
TOTAL	155	133	234	106	135	1,358	382	743	406	70	3,722

* Please see page 4 for an explanation of this breakdown.

PROBATE COURT STATISTICS JULY 1, 1984 TO JUNE 30, 1985

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
New Files Opened:											
Adoptions	40	20	38	18	43	193	75	159	60	24	670
Change of Names	58	20	58	10	31	256	80	137	60	26	736
Involuntary Commitments	0	0	0	0	0	3	228	0	0	0	231
Conservators Appointed	6	4	5	1	3	11	12	5	3	2	52
Guardians Appointed:											
a. Incompetents	21	5	14	9	17	115	20	56	12	17	286
b. Minors	29	16	16	9	25	67	25	36	14	12	249
Wills Allowed	226	101	158	112	207	950	327	361	276	148	2,866
Administrations Allowed	177	44	108	38	273	208	100	130	74	48	1,200
Voluntary Administration	51	25	49	35	52	109	103	148	210	20	802
Marriage Waivers Granted	26	20	49	15	28	225	68	298	55	29	813
Inheritance Tax Receipt Where No Administration of Estate	2	2	0	0	0	0	0	3	1	0	8
Death Certificate Where No Administration of Estate	0	0	0	7	15	2	0	119	11	0	154
Petitions to File and Record Authenticated Copy of Will	14	35	14	5	14	20	28	30	7	10	177
Termination of Parental Rights	7	0	5	5	6	41	8	18	16	6	112
Relinquishment of Parental Rights	2	1	24	1	4	32	19	6	13	0	102
Other	0	45	0	3	0	2	26	133	9	0	218
TOTAL	659	338	538	268	718	2,234	1,119	1,639	821	342	8,676
Trustees Appointed	7	9	15	3	19	18	24	32	0	3	130
Accounts Allowed:											
a. Administrators & Executors	203	190	248	139	320	766	375	646	402	169	3,458
b. Guardians & Conservators	267	61	126	30	88	248	247	271	156	52	1,546
c. Trustees	115	101	126	36	137	490	217	247	150	56	1,675
TOTAL ACCOUNTS	585	352	500	205	545	1,504	839	1,164	708	277	6,679
Licenses Issued:											
a. Goods and Chattels	1	1	0	0	2	6	9	10	1	2	32
b. Stocks and Bonds	0	9	2	0	5	13	15	2	6	1	53
c. Real Estate	8	10	7	7	101	59	21	41	63	9	326
d. Miscellaneous	0	0	0	1	66	0	0	0	3	0	70
TOTAL LICENSES	9	20	9	8	174	78	45	53	73	12	481

PROBATE COURT STATISTICS JULY 1, 1985 TO JUNE 30, 1986

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsborough	Merrimack	Rockingham	Strafford	Sullivan	Total
New Files Opened:											
Adoptions	31	24	59	28	33	245	63	177	39	28	727
Change of Names	40	8	40	15	44	247	83	140	63	32	712
Involuntary Commitments	0	0	0	0	0	4	259	0	0	0	263
Conservators Appointed	7	0	7	3	4	12	9	15	3	1	61
Guardians Appointed:											
a. Incompetents	34	8	13	8	48	114	85	52	26	23	411
b. Minors	18	11	25	10	22	79	32	56	23	13	289
Wills Allowed	218	122	211	106	217	912	333	403	311	161	2,994
Administrations Allowed	182	57	57	47	292	198	120	176	77	51	1,257
Voluntary Administrations	42	26	41	41	55	125	94	174	85	23	706
Marriage Waivers Granted	32	28	50	10	35	217	66	225	44	23	730
Inheritance Tax Receipt Where No Administration of Estate	3	0	1	1	5	1	2	0	0	0	13
Death Certificate Where No Administration of Estate	25	2	0	7	31	0	0	88	0	0	153
Petitions to File and Record Authenticated Copy of Will	26	35	16	4	29	28	15	49	3	14	219
Termination of Parental Rights	3	2	9	8	5	(69)	7	20	28	11	93
Relinquishment of Parental Rights	2	3	19	12	10	21	13	22	13	5	120
Other	0	43	0	12	0	7	1	121	0	0	184
TOTAL	663	369	548	312	830	2,210	1,182	1,718	715	385	8,932
Trustees Appointed	18	11	6	2	25	16	20	14	32	8	152
Accounts Allowed:											
a. Administrators & Executors	261	212	239	144	314	766	397	601	401	155	3,490
b. Guardians & Conservators	340	65	120	49	91	332	272	275	148	72	1,764
c. Trustees	81	93	129	27	154	313	232	241	132	67	1,469
TOTAL ACCOUNTS	682	370	488	220	559	1,411	901	1,117	681	294	6,723
Licenses Issued:											
a. Goods and Chattels	1	1	2	0	0	8	8	2	2	1	25
b. Stocks and Bonds	0	12	3	1	0	11	19	2	4	4	56
c. Real Estate	5	13	15	3	103	24	25	33	67	7	295
d. Miscellaneous	0	0	0	0	3	0	0	2	0	0	5
TOTAL LICENSES	6	26	20	4	106	43	52	39	73	12	381

DISTRICT COURT CRIMINAL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1985

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Auburn	2,432	91	21	217	8	13	8	2,790
Berlin	520	26	30	98	6	4	5	689
Claremont	857	53	59	259	10	9	44	1,291
Colebrook	331	25	129	109	2	1	13	610
Concord	7,036	190	193	667	25	56	104	8,271
Conway	1,480	190	99	381	10	20	32	2,212
Derry	3,230	157	155	439	29	36	55	4,101
Dover	2,857	127	634	274	13	32	74	4,011
Durham	1,549	44	126	95	5	13	7	1,839
Exeter	2,364	72	84	242	10	20	5	2,797
Franklin	970	50	74	227	14	12	28	1,375
Goffstown	2,556	130	111	291	21	31	14	3,154
Gorham	435	27	19	86	5	2	9	583
Hampton	5,228	153	190	414	17	16	52	6,070
Hanover	487	11	318	88	0	2	10	916
Haverhill	255	16	25	113	2	5	25	441
Henniker	1,209	22	15	79	7	7	8	1,347
Hillsborough	535	7	68	76	3	6	3	698
Hooksett	4,016	53	16	376	12	32	43	4,548
Jaffrey	2,575	71	56	170	19	17	13	2,921
Keene	3,939	116	1,562	498	35	40	77	6,267
Laconia	6,197	239	399	706	43	51	86	7,721
Lancaster	574	27	0	14	2	4	0	621
Lebanon	2,176	80	35	255	18	17	56	2,737
Lincoln	696	31	62	107	5	4	2	907
Littleton	660	43	56	201	8	14	13	995
Manchester	4,314	168	317	1,466	55	54	286	6,660
Merrimack	3,870	103	158	394	13	24	36	4,598
Milford	3,032	85	91	289	14	26	26	3,563
Nashua	11,182	669	394	2,080	121	173	311	14,930
New London	1,411	16	10	44	1	2	4	1,488
Newport	1,296	36	71	151	8	18	16	1,596
Ossipee	1,441	36	40	130	14	11	14	1,686
Peterboro	808	19	23	94	6	8	20	978
Pittsfield	811	20	11	94	3	7	9	955
Plaistow	2,343	54	257	150	14	10	33	2,861
Plymouth	2,365	106	193	278	0	30	12	2,984
Portsmouth	3,648	152	51	465	64	69	24	4,473
Rochester	3,505	147	22	361	20	29	45	4,129
Salem	6,506	323	133	642	34	45	87	7,770
Somersworth	1,062	38	122	187	10	15	17	1,451
Wolfeboro	638	36	95	105	12	7	9	902
TOTAL	103,496	4,059	6,524	13,412	718	992	1,735	130,936

*Aggravated DWI: See RSA 265:82-a

MUNICIPAL COURT CRIMINAL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1985

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Farmington	320	16	74	106	4	7	20	549
Greenville	78	3	14	36	0	2	0	133
Hinsdale	350	19	22	70	4	4	0	469
Loudon	333	12	20	29	8	1	1	404
Newmarket	479	23	21	83	12	10	4	632
Northumberland	56	3	10	34	0	1	0	104
Pelham	434	21	46	117	13	7	22	660
Rye	422	5	100	32	2	1	0	562
Whitefield	85	2	2	25	0	1	0	115
TOTAL	2,557	104	309	532	45	34	47	3,628

*Aggravated DWI: See RSA 265:82-a

DISTRICT COURT CRIMINAL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1985

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Auburn	1,934	97	38	251	8	18	16	2,362
Berlin	560	25	6	102	5	9	25	732
Claremont	963	41	68	292	4	9	48	1,425
Colebrook	499	33	99	115	4	6	26	782
Concord	8,483	167	1,751	675	30	45	89	11,240
Conway	1,460	145	154	359	10	20	43	2,191
Derry	4,324	205	178	461	20	44	50	5,282
Dover	2,766	112	371	333	10	25	83	3,700
Durham	1,749	29	299	120	2	11	4	2,214
Exeter	2,480	121	128	353	16	25	38	3,161
Franklin	1,412	59	73	243	11	9	82	1,889
Goffstown	2,032	115	140	246	14	22	40	2,609
Gorham	475	20	16	91	4	1	4	611
Hampton	5,242	224	700	667	21	22	90	6,966
Hanover	625	8	593	62	2	0	15	1,305
Haverhill	440	24	49	167	2	3	25	710
Henniker	1,257	23	24	79	6	3	9	1,401
Hillsborough	342	16	45	104	3	7	21	538
Hooksett	4,832	59	38	274	14	18	25	5,260
Jaffrey	2,521	73	155	139	14	20	30	2,952
Keene	3,986	119	1,141	518	32	48	78	5,922
Laconia	5,983	174	368	645	32	54	65	7,321
Lancaster	514	21	0	31	3	1	1	571
Lebanon	2,014	69	36	188	8	28	18	2,361
Lincoln	675	20	97	103	5	3	10	913
Littleton	973	40	64	260	7	16	17	1,377
Manchester	4,621	155	649	1,551	40	45	512	7,573
Merrimack	3,791	125	150	360	17	28	80	4,551
Milford	3,614	73	198	337	9	30	39	4,300
Nashua	9,368	569	498	2,222	153	172	362	13,344
New London	1,827	20	13	46	5	1	1	1,913
Newport	1,585	41	59	161	2	16	11	1,875
Ossipee	1,433	52	76	176	8	16	28	1,789
Peterboro	1,635	30	14	119	8	3	18	1,827
Pittsfield	888	20	9	88	4	6	66	1,081
Plaistow	2,462	111	282	293	28	14	53	3,243
Plymouth	2,528	80	182	302	6	11	17	3,126
Portsmouth	3,653	139	340	370	40	52	21	4,615
Rochester	3,506	88	25	404	9	21	38	4,091
Salem	5,370	222	115	662	18	35	88	6,510
Somersworth	957	25	147	99	3	4	25	1,260
Wolfeboro	795	40	127	113	9	11	10	1,105
TOTAL	106,574	3,829	9,515	14,181	646	932	2,321	137,998

*Aggravated DWI: See RSA 265:82-a

MUNICIPAL COURT CRIMINAL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1985

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Farmington	245	19	91	71	4	4	22	456
Greenville	80	9	5	35	0	0	0	129
Hinsdale	255	21	31	67	2	11	0	387
Loudon	306	14	8	33	5	1	3	370
Newmarket	582	19	22	71	8	1	7	710
Northumberland	64	2	7	57	2	2	0	134
Pelham	427	16	74	118	7	6	15	663
Rye	367	5	357	59	2	0	5	795
Whitefield	85	3	18	18	0	2	7	133
TOTAL	2,411	108	613	529	30	27	59	3,777

*Aggravated DWI: See RSA 265:82-a

DISTRICT COURT CIVIL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1985

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Auburn	38	22	135	6	201
Berlin	23	4	25	17	295
Claremont	49	47	336	52	484
Colebrook	14	0	87	7	108
Concord	321	94	1,159	55	1,629
Conway	42	2	216	16	276
Derry	92	34	487	42	655
Dover	71	38	412	52	573
Durham	20	3	51	3	77
Exeter	62	15	296	14	387
Franklin	25	13	160	39	237
Goffstown	38	17	176	9	240
Gorham	7	0	163	5	175
Hampton	125	21	303	24	473
Hanover	5	0	116	3	124
Haverhill	4	1	362	2	369
Henniker	18	0	61	4	83
Hillsborough	14	2	261	9	286
Hooksett	28	23	111	19	181
Jaffrey	15	7	137	12	171
Keene	167	57	863	74	1,161
Laconia	155	67	558	68	848
Lancaster	17	4	51	8	80
Lebanon	33	11	190	24	258
Lincoln	2	2	39	3	46
Littleton	33	0	243	15	291
Manchester	429	524	978	141	2,072
Merrimack	83	23	312	12	430
Milford	98	33	288	21	440
Nashua	437	329	2,143	175	3,084
New London	18	1	147	0	166
Newport	22	17	189	18	246
Ossipee	11	0	144	11	166
Peterboro	18	4	302	13	337
Pittsfield	8	8	144	8	168
Plaistow	47	12	199	21	279
Plymouth	24	12	301	29	366
Portsmouth	97	160	739	31	1,027
Rochester	74	41	429	81	625
Salem	80	68	255	37	440
Somersworth	13	33	108	22	176
Wolfeboro	31	1	191	7	230
TOTAL	2,908	1,750	14,093	1,209	19,960

MUNICIPAL COURT CIVIL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1985

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Farmington	0	1	16	0	17
Greenville	0	0	5	0	5
Hinsdale	0	1	15	0	16
Loudon	0	1	28	0	29
Newmarket	0	12	18	0	30
Northumberland	0	0	23	0	23
Pelham	0	1	52	0	53
Rye	0	0	20	0	20
Whitefield	0	0	13	0	13
TOTAL	0	16	190	0	206

DISTRICT COURT CIVIL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1985

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Auburn	31	10	132	9	182
Berlin	16	5	268	10	299
Claremont	48	57	305	52	462
Colebrook	10	0	72	8	90
Concord	241	93	1,090	43	1,467
Conway	37	5	243	15	300
Derry	119	45	431	41	636
Dover	73	56	402	41	572
Durham	20	5	50	4	79
Exeter	65	29	264	12	370
Franklin	31	17	186	26	260
Goffstown	31	8	138	27	204
Gorham	6	0	81	6	93
Hampton	99	21	293	36	449
Hanover	7	1	112	2	122
Haverhill	10	1	493	6	510
Henniker	8	7	50	6	71
Hillsborough	20	9	148	17	194
Hooksett	68	64	140	20	292
Jaffrey	15	11	126	20	172
Keene	148	60	763	64	1,035
Laconia	164	76	595	81	916
Lancaster	7	3	21	15	46
Lebanon	33	12	214	24	283
Lincoln	1	1	33	4	39
Littleton	27	0	188	23	238
Manchester	433	626	1,683	172	2,914
Merrimack	81	10	232	9	332
Milford	76	49	238	29	392
Nashua	558	347	1,811	152	2,868
New London	5	4	76	7	92
Newport	33	21	218	19	291
Ossipee	20	2	127	12	161
Peterboro	34	12	215	12	273
Pittsfield	17	6	209	9	241
Plaistow	57	9	179	26	271
Plymouth	28	22	239	13	302
Portsmouth	103	87	759	38	987
Rochester	92	40	374	61	567
Salem	101	52	303	30	486
Somersworth	17	43	100	11	171
Wolfeboro	22	0	106	15	143
TOTAL	3,012	1,926	13,707	1,227	19,872

MUNICIPAL COURT CIVIL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1985

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Farmington	0	2	18	0	20
Greenville	0	0	2	0	2
Hinsdale	1	7	8	0	16
Loudon	0	2	9	0	11
Newmarket	0	22	19	0	41
Northumberland	0	0	27	0	27
Pelham	0	19	42	0	61
Rye	0	0	24	0	24
Whitefield	0	0	9	0	9
TOTAL	1	52	158	0	211

DISTRICT COURT JUVENILE CASE ENTRIES
JANUARY 1 TO JUNE 30, 1985

Court	Neglected Children	Abused Children	Delinquent Children	CHINS	Total
Auburn	5	4	19	19	47
Berlin	3	3	70	3	79
Claremont	5	7	35	7	54
Colebrook	1	2	3	0	6
Concord	12	9	91	20	132
Conway	0	0	36	3	39
Derry	2	1	64	10	77
Dover	8	2	45	14	69
Durham	1	0	25	8	34
Exeter	1	0	55	17	73
Franklin	8	17	40	3	68
Goffstown	3	2	68	22	95
Gorham	0	0	3	0	3
Hampton	7	0	46	14	67
Hanover	1	0	15	4	20
Haverhill	5	2	18	12	37
Henniker	0	1	4	1	6
Hillsborough	2	1	24	5	32
Hooksett	16	3	36	5	60
Jaffrey	3	2	14	4	23
Keene	5	3	96	5	109
Laconia	18	13	108	35	174
Lancaster	16	0	31	4	51
Lebanon	2	2	22	4	30
Lincoln	0	2	3	1	6
Littleton	8	6	26	10	50
Manchester	132	0	574	37	743
Merrimack	0	1	108	8	117
Milford	2	0	86	19	107
Nashua	11	11	334	129	485
New London	1	0	1	0	2
Newport	2	1	27	12	42
Ossipee	1	1	87	1	90
Peterboro	0	0	8	0	8
Pittsfield	4	1	5	0	10
Plaistow	4	1	62	7	74
Plymouth	5	16	21	4	46
Portsmouth	9	4	51	15	79
Rochester	16	6	88	11	121
Salem	4	0	69	28	101
Somersworth	3	2	55	5	65
Wolfeboro	0	2	27	4	33
TOTAL	326	128	2,600	510	3,564

DISTRICT COURT JUVENILE CASE ENTRIES
JULY 1 TO DECEMBER 31, 1985

Court	Neglected Children	Abused Children	Delinquent Children	CHINS	Total
Auburn	2	2	35	17	56
Berlin	5	4	73	2	84
Claremont	5	4	43	11	63
Colebrook	3	3	24	5	35
Concord	41	3	109	15	168
Conway	10	0	14	6	30
Derry	3	1	50	16	70
Dover	13	5	68	9	95
Durham	1	1	22	6	30
Exeter	1	1	44	13	59
Franklin	10	18	60	15	103
Goffstown	10	5	59	18	92
Gorham	0	0	5	1	6
Hampton	7	1	91	25	124
Hanover	0	0	7	3	10
Haverhill	6	5	30	1	42
Henniker	1	0	2	0	3
Hillsborough	4	0	14	4	22
Hooksett	4	4	8	5	21
Jaffrey	1	0	68	7	76
Keene	11	6	162	18	197
Laconia	16	10	152	39	217
Lancaster	3	5	17	6	31
Lebanon	7	8	20	8	43
Lincoln	0	0	5	2	7
Littleton	7	8	29	9	53
Manchester	155	0	426	34	615
Merrimack	4	5	61	27	97
Milford	1	1	56	10	68
Nashua	29	14	390	130	563
New London	0	0	3	0	3
Newport	2	2	17	5	26
Ossipee	0	2	37	2	41
Peterboro	1	1	23	2	27
Pittsfield	0	1	9	4	14
Plaistow	5	0	89	13	107
Plymouth	5	3	18	7	33
Portsmouth	5	2	90	9	106
Rochester	19	6	92	15	132
Salem	0	0	57	21	78
Somersworth	0	1	40	2	43
Wolfeboro	1	3	26	1	31
TOTAL	398	135	2,645	543	3,721

DISTRICT COURT CRIMINAL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1986

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Auburn	2,615	58	116	218	4	8	28	3,047
Berlin	697	18	20	79	6	4	20	844
Claremont	1,061	65	47	263	14	8	36	1,494
Colebrook	281	33	86	63	6	4	5	478
Concord	9,244	177	1,875	857	24	70	127	12,374
Conway	1,608	168	50	291	12	25	17	2,171
Derry	4,982	150	296	500	13	66	74	6,081
Dover	1,595	78	326	201	10	12	44	2,266
Durham	2,265	31	266	195	5	3	9	2,774
Exeter	2,857	117	299	402	14	30	24	3,743
Franklin	1,488	43	104	258	7	12	72	1,984
Goffstown	2,389	100	277	326	12	19	42	3,165
Gorham	554	27	31	74	8	1	10	705
Hampton	5,739	257	895	628	29	26	106	7,680
Hanover	545	22	436	79	7	1	7	1,097
Haverhill	380	15	50	164	1	1	31	642
Henniker	1,313	23	27	78	3	7	5	1,456
Hillsborough	534	25	61	85	11	11	13	740
Hooksett	4,802	89	5	340	18	19	16	5,289
Jaffrey	2,038	85	98	154	13	22	19	2,429
Keene	3,956	127	1,351	691	31	45	65	6,266
Laconia	5,168	172	418	532	15	34	102	6,441
Lancaster	372	19	5	16	2	1	0	415
Lebanon	2,378	79	30	202	5	29	19	2,742
Lincoln	1,010	61	109	119	5	2	4	1,310
Littleton	727	41	49	181	7	13	31	1,049
Manchester	4,218	129	721	1,369	46	49	320	6,852
Merrimack	3,921	136	144	459	20	36	35	4,751
Milford	4,280	84	127	374	11	14	44	4,934
Nashua	11,209	442	211	1,651	75	106	302	13,996
New London	2,253	15	8	41	1	3	4	2,325
Newport	1,131	53	41	167	11	14	13	1,430
Ossipee	1,076	31	31	172	3	2	19	1,334
Peterboro	1,728	32	27	107	6	15	11	1,926
Pittsfield	1,098	23	43	144	11	7	15	1,341
Plaistow	1,889	31	156	197	7	21	18	2,319
Plymouth	2,367	97	128	230	7	25	16	2,870
Portsmouth	4,628	99	696	469	23	37	53	6,005
Rochester	4,400	103	39	494	30	31	52	5,149
Salem	5,807	212	100	544	16	45	99	6,823
Somersworth	1,113	41	98	164	5	15	40	1,476
Wolfeboro	615	44	82	52	4	4	13	814
TOTAL	112,331	3,652	9,979	13,630	558	897	1,980	143,027

*Aggravated DWI: See RSA 265:82-a

MUNICIPAL COURT CRIMINAL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1986

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Farmington	205	12	76	91	7	8	9	408
Greenville	148	10	71	38	1	0	2	270
Hinsdale	288	30	26	53	1	5	0	403
Loudon	365	17	12	13	2	2	6	417
Newmarket	386	14	21	64	4	14	9	512
Northumberland	58	0	15	47	1	1	2	124
Pelham	544	21	76	108	10	12	25	796
Rye	378	11	57	14	1	0	0	461
TOTAL	2,372	115	354	428	27	42	53	3,391

*Aggravated DWI: See RSA 265:82-a

DISTRICT COURT CRIMINAL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1986

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Auburn	3,932	61	157	246	8	19	31	4,454
Berlin	608	26	31	103	6	7	2	783
Claremont	1,183	64	146	330	8	19	30	1,780
Colebrook	487	33	95	131	7	5	20	778
Concord	9,688	187	1,976	809	42	44	136	12,882
Conway	2,144	191	135	322	16	29	32	2,869
Derry	5,734	200	284	667	23	54	58	7,020
Dover	3,351	101	506	490	18	31	104	4,601
Durham	2,197	32	312	121	1	9	4	2,676
Exeter	3,092	142	312	363	25	40	48	4,022
Franklin	1,917	40	117	226	12	16	32	2,360
Goffstown	2,285	89	271	331	12	28	43	3,059
Gorham	772	21	36	53	16	4	9	911
Hampton	6,804	384	1,870	797	38	36	109	10,038
Hanover	729	15	675	74	1	1	12	1,507
Haverhill	415	18	33	136	2	8	27	639
Henniker	1,341	22	42	70	6	3	11	1,495
Hillsborough	840	34	59	102	14	8	20	1,077
Hooksett	6,403	111	37	384	14	35	129	7,113
Jaffrey	2,420	78	255	196	21	29	24	3,023
Keene	3,880	186	1,423	802	31	35	107	6,464
Laconia	6,748	249	1,083	677	20	45	98	8,920
Lancaster	1,216	17	47	42	1	1	2	1,326
Lebanon	3,526	148	126	324	21	35	34	4,214
Lincoln	1,078	37	87	119	8	3	8	1,340
Littleton	1,092	50	155	310	20	11	20	1,658
Manchester	4,621	149	820	1,799	48	57	416	7,910
Merrimack	4,211	101	176	519	24	42	42	5,115
Milford	3,884	70	72	401	5	9	55	4,496
Nashua	11,239	545	535	2,220	91	161	368	15,159
New London	2,310	21	33	56	3	3	16	2,442
Newport	1,839	32	71	149	2	17	41	2,151
Ossipee	1,314	73	169	210	8	15	21	1,810
Peterboro	1,920	36	55	176	12	17	19	2,235
Pittsfield	890	26	53	95	3	6	13	1,086
Plaistow	2,319	59	598	251	7	18	32	3,284
Plymouth	2,917	114	278	289	15	23	41	3,677
Portsmouth	5,720	162	772	599	50	52	64	7,419
Rochester	3,620	111	129	476	16	22	31	4,405
Salem	5,155	295	122	651	27	44	83	6,377
Somersworth	1,313	47	135	208	4	8	34	1,749
Wolfeboro	963	39	141	116	12	21	8	1,300
TOTAL	128,117	4,416	14,429	16,440	718	1,070	2,434	167,624

*Aggravated DWI: See RSA 265:82-a

MUNICIPAL COURT CRIMINAL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1986

Court	Motor Vehicle Violations	DWI 1st	Other Violations	Misdemeanors	Aggr.* DWI	DWI 2nd	Probable Cause Hearings	Total
Farmington	234	20	139	114	1	12	10	530
Greenville	123	4	64	43	0	1	0	235
Hinsdale	487	32	35	58	7	8	0	627
Loudon	263	10	9	49	0	0	5	336
Newmarket	480	29	40	95	5	3	2	654
Northumberland	280	8	12	73	0	4	15	392
Pelham	526	40	120	189	11	15	26	927
Rye	583	6	103	22	0	0	10	724
TOTAL	2,978	149	522	643	24	43	68	4,427

*Aggravated DWI: See RSA 265:82-a

DISTRICT COURT CIVIL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1986

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Auburn	38	13	142	5	198
Berlin	17	0	344	19	380
Claremont	59	63	367	53	542
Colebrook	7	4	118	14	143
Concord	333	69	1,198	83	1,683
Conway	45	10	297	42	394
Derry	128	61	473	45	707
Dover	86	41	461	26	614
Durham	12	7	52	3	74
Exeter	38	28	345	6	444
Franklin	29	21	140	35	225
Goffstown	38	6	175	23	242
Gorham	2	2	61	6	71
Hampton	150	37	291	30	508
Hanover	21	6	150	6	183
Haverhill	10	0	206	14	230
Henniker	13	2	57	14	86
Hillsborough	15	8	192	23	238
Hooksett	66	33	147	24	270
Jaffrey	17	11	79	23	130
Keene	111	48	857	48	1,064
Laconia	121	81	506	76	784
Lancaster	9	2	55	15	81
Lebanon	32	15	217	40	304
Lincoln	6	0	60	5	71
Littleton	26	0	300	33	359
Manchester	524	614	2,086	173	3,397
Merrimack	75	25	261	19	380
Milford	62	37	353	28	480
Nashua	631	317	1,950	162	3,060
New London	7	0	121	1	129
Newport	34	15	246	24	319
Ossipee	18	6	157	12	193
Peterboro	20	12	211	23	266
Pittsfield	17	15	103	10	145
Plaistow	68	20	225	23	336
Plymouth	44	14	261	41	360
Portsmouth	106	73	649	39	867
Rochester	132	59	420	64	675
Salem	96	58	341	43	538
Somersworth	17	33	101	24	175
Wolfeboro	27	1	121	4	153
TOTAL	3,307	1,867	14,896	1,401	21,498

MUNICIPAL COURT CIVIL CASE ENTRIES
JANUARY 1 TO JUNE 30, 1986

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Farmington	0	9	28	0	37
Greenville	0	0	0	0	0
Hinsdale	0	2	9	0	11
Loudon	0	0	12	0	12
Newmarket	0	24	25	0	49
Northumberland	0	0	42	0	42
Pelham	0	0	46	0	46
Rye	0	5	46	0	51
TOTAL	0	40	208	0	248

DISTRICT COURT CIVIL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1986

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Auburn	38	13	142	5	198
Berlin	27	8	252	25	312
Claremont	33	63	383	51	530
Colebrook	5	4	133	10	152
Concord	390	85	1,004	53	1,532
Conway	34	8	268	44	354
Derry	133	117	468	57	775
Dover	73	66	433	39	611
Durham	11	3	45	3	62
Exeter	84	28	380	8	500
Franklin	41	23	189	30	283
Goffstown	37	14	133	15	199
Gorham	4	3	62	2	71
Hampton	77	33	290	61	461
Hanover	31	6	137	6	180
Haverhill	7	4	273	6	290
Henniker	9	9	51	10	79
Hillsborough	19	6	219	15	259
Hooksett	52	41	155	28	276
Jaffrey	20	19	87	16	142
Keene	124	68	749	52	993
Laconia	132	102	568	83	885
Lancaster	13	3	101	10	127
Lebanon	26	32	208	36	302
Lincoln	5	2	55	5	67
Littleton	28	0	226	25	279
Manchester	552	618	1,790	178	3,138
Merrimack	88	14	275	10	387
Milford	66	43	333	33	475
Nashua	708	355	1,879	164	3,106
New London	13	5	111	3	132
Newport	32	7	233	32	304
Ossipee	9	3	91	7	110
Peterboro	36	12	153	18	219
Pittsfield	19	18	132	17	186
Plaistow	92	25	232	31	380
Plymouth	45	26	433	42	546
Portsmouth	118	63	567	23	771
Rochester	137	64	527	85	813
Salem	140	49	314	41	544
Somersworth	13	22	66	13	114
Wolfeboro	24	1	139	10	174
TOTAL	3,545	2,085	14,286	1,402	21,318

MUNICIPAL COURT CIVIL CASE ENTRIES
JULY 1 TO DECEMBER 31, 1986

	Writs	Landlord & Tenant	Small Claims	Domestic Violence	Total
Farmington	0	5	17	0	22
Greenville	0	0	20	0	20
Hinsdale	0	18	4	0	22
Loudon	1	1	10	0	12
Newmarket	0	13	30	0	43
Northumberland	0	0	20	0	20
Pelham	0	0	66	0	66
Rye	0	3	23	0	26
TOTAL	1	40	190	0	231

DISTRICT COURT JUVENILE CASE ENTRIES
JANUARY 1 TO JUNE 30, 1986

Court	Neglected Children	Abused Children	Delinquent Children	CHINS	Total
Auburn	4	1	24	18	47
Berlin	10	3	43	16	72
Claremont	6	10	61	16	93
Colebrook	3	3	12	1	19
Concord	6	4	89	16	115
Conway	0	0	32	1	33
Derry	4	2	45	10	61
Dover	10	1	24	11	46
Durham	0	3	13	2	18
Exeter	4	1	50	21	76
Franklin	5	15	24	18	62
Goffstown	1	1	75	9	86
Gorham	2	3	6	2	13
Hampton	10	7	16	27	60
Hanover	1	0	24	2	27
Haverhill	2	1	32	4	39
Henniker	1	2	5	1	9
Hillsborough	2	0	16	10	28
Hooksett	6	1	21	12	40
Jaffrey	3	1	26	6	36
Keene	21	10	179	16	226
Laconia	18	8	155	25	206
Lancaster	10	2	24	5	41
Lebanon	5	6	22	4	37
Lincoln	2	0	8	4	14
Littleton	13	11	52	12	88
Manchester	173	5	374	18	570
Merrimack	0	0	50	14	64
Milford	4	2	54	16	76
Nashua	24	8	338	140	510
New London	0	0	1	0	1
Newport	5	1	27	6	39
Ossipee	4	1	52	2	59
Peterboro	12	3	19	11	45
Pittsfield	0	0	11	4	15
Plaistow	4	0	42	8	54
Plymouth	5	3	52	9	69
Portsmouth	3	3	46	30	82
Rochester	9	13	59	14	95
Salem	1	1	71	31	104
Somersworth	5	0	70	8	83
Wolfeboro	1	5	27	6	39
TOTAL	399	141	2,371	586	3,497

DISTRICT COURT JUVENILE CASE ENTRIES
JULY 1 TO DECEMBER 31, 1986

Court	Neglected Children	Abused Children	Delinquent Children	CHINS	Total
Auburn	7	1	45	7	60
Berlin	4	2	75	1	82
Claremont	4	2	50	17	73
Colebrook	3	6	18	5	32
Concord	22	8	104	17	151
Conway	3	0	34	0	37
Derry	4	6	64	7	81
Dover	6	2	38	17	63
Durham	0	0	7	0	7
Exeter	2	1	72	12	87
Franklin	5	18	42	17	82
Goffstown	3	3	53	21	80
Gorham	1	0	9	1	11
Hampton	11	5	31	13	60
Hanover	0	0	13	2	15
Haverhill	10	2	6	3	21
Henniker	0	1	3	4	8
Hillsborough	0	1	7	4	12
Hooksett	1	1	16	18	36
Jaffrey	0	1	29	8	38
Keene	11	17	84	17	129
Laconia	16	4	116	39	175
Lancaster	7	0	17	2	26
Lebanon	12	5	26	5	48
Lincoln	2	0	11	1	14
Littleton	2	2	46	9	59
Manchester	47	55	320	27	449
Merrimack	2	1	62	23	88
Milford	5	0	27	26	58
Nashua	34	7	332	95	468
New London	0	1	5	0	6
Newport	1	3	49	27	80
Ossipee	3	3	19	4	29
Peterboro	8	7	30	9	54
Pittsfield	4	2	29	2	37
Plaistow	2	0	72	15	89
Plymouth	7	6	39	9	61
Portsmouth	6	1	61	27	95
Rochester	34	7	57	20	118
Salem	19	0	44	20	83
Somersworth	2	1	38	5	46
Wolfeboro	0	2	40	3	45
TOTAL	310	184	2,240	559	3,293